Canadian Environmental Advisory Council | Conseil consultatif canadien de l'environnement

Canadian Environmental Advisory Council

Preparing for the 1990s: Environmental Assessment, an Integral Part of Decision Making

February 1988

Canada

Canadian
Environmental
Advisory
Council

**Preparing for the 1990s:
Environmental Assessment,
an Integral Part of Decision Making**

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Canadian Environmental Advisory Council *Conseil consultatif canadien de l'environnement*

Ottawa, Canada
K1A 0H3

March 9, 1988

Honourable Tom McMillan, P.C., M.P.,
Minister of the Environment,
Ottawa.

Dear Mr. McMillan:

The Canadian Environmental Advisory Council wishes to transmit for your consideration the enclosed report "Preparing for the 1990's: Environmental Assessment, an Integral Part of Decision Making." As you are aware from our previous reports and discussions with you, Council strongly urges you to proceed with a fundamental restructuring of the Environmental Assessment and Review Process including a legislated base. The call for reform has been virtually unanimous and the urgency is clear. Therefore we hope that you will proceed without delay.

We wish you well in this endeavour and we would be delighted to develop further aspects of this report if it would be of service.

Sincerely,

Robert Page
Chairman

ROLE OF THE CANADIAN ENVIRONMENTAL ADVISORY COUNCIL

The Canadian Environmental Advisory Council (CEAC) is a body representing a cross-section of Canadians who are knowledgeable and concerned about the environment. It operates in a confidential advisory capacity to the Minister of the Environment. It provides the Minister with an alternative to the advice provided by the Department of the Environment and other federal agencies, and to the advice of specific interest groups. Council's public role, in terms of activities such as the publishing of reports, is therefore secondary to its primary function of providing advice to the Minister of the Environment.

ACKNOWLEDGEMENTS

This report reflects, in part, the discussions at a workshop held in Toronto on January 7-8, 1988. Several former members ("alumni") of the Council participated in that workshop and, along with current members, made a significant contribution to this study of the Environmental Assessment and Review Process. A list of the participants appears as Annex 2.

CEAC benefitted from discussions with members of the Canadian Environmental Assessment Research Council through a joint meeting of the two councils in December 1987. The Federal Environmental Assessment Review Office (FEARO) also supported the Council's efforts.

The Council had access to a number of studies undertaken in Canada and internationally, and commissioned one study specifically for this review. A copy of the paper by W. A. Ross, "Authorities for a Federal Environmental Assessment Process" is available from the CEAC office.

Dr. P. M. Bird was retained by Council during the project. He assisted the Council throughout and prepared this report.

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EXECUTIVE SUMMARY

This review has been carried out within the context of recent national and international developments which point to the close linkages between the environment and social and economic planning. Environmental assessment is a key tool in both planning and management. In preparing for the 1990s, the Government of Canada has an important leadership role to play, and a major strengthening of the existing Environmental Assessment and Review Process would contribute significantly to the goal of sustainable development.

This report contains a large number of recommendations which will substantially alter the present Process while retaining many of its features. Among the key changes that are proposed are:

- the development of specific environmental assessment legislation covering proposals for which the Government of Canada has the decision making responsibility;

- applicability of the Process to all departments, boards, agencies, crown corporations and regulatory bodies without qualification;

- retention of the principle of self-assessment, but subject to audit and override provisions;

- development and public review of screening criteria;

- environmental assessment procedures for dealing with site-specific projects detailed in regulations;

- a new high level environmental review mechanism for policy/program consideration;

- provision for alternative conflict resolution mechanisms;

- greater opportunity for public involvement at various stages of the Process, including provision for appeals to the Minister of the Environment for a more extensive review;

- greater responsibility for the Minister of the Environment including authority to initiate EIA in certain circumstances;

- a requirement to negotiate interjurisdictional agreements to minimize unnecessary duplication;

- provision for formal hearing procedures, while preferring informal hearings as the norm;

- greater emphasis on post-implementation monitoring and feedback;

- strengthening bilateral aid policy to meet Canadian concerns about possible global environmental degradation;

- encouragement for the conduct of collaborative regional planning exercises to determine the extent of existing environmental stress and the ecological characteristics most susceptible to environmental disturbance in various parts of the country;

- support for intervenor funding by the proponent with funds administered by a small independent committee.

Acceptance and implementation of the recommendations in this report will require concomitant commitment of resources in both initiating departments and in the Office responsible for the administration of the reformed Process.

In order to better visualize the overall Process as recommended, this report includes as Annex 7 a summary description of the reformed Process along with a diagram showing the entire flow from beginning to end.

FOREWORD

The Canadian Environmental Advisory Council (CEAC) welcomed the invitation by the Minister of the Environment to participate in the current review of the federal Environmental Assessment and Review Process (EARP) and to present its findings and recommendations in this report.

Interest in this subject was one of CEAC's early considerations. In its report "An Environmental Impact Assessment Process for Canada" (CEAC, 1975), the Council recommended that the federal government show leadership by enacting legislation requiring that environmental assessments be carried out for proposed projects falling within federal jurisdiction. The Council recommended the establishment of an independent "environmental review board" to administer a multi-stage process with public involvement as a prominent feature. The report also outlined various criteria which could be used to determine the kinds of projects and impacts that should fall within the scope of the proposed process.

In its 1979-80 Annual Review (CEAC, 1981), the Council made a number of observations and recommendations concerning EARP. The Council identified several principles which should underlie the Process including: accountability for decisions at the screening stage; public participation as a vital part of the Process; independence and strength of panels; and the decision making role of the Minister of the Environment.

Detailed recommendations were made in relation to the panel hearings, the screening procedure and the scope of the Process. These recommendations covered such points as: establishing a power of subpoena for panel hearings; funding for citizen participation; public response to screening decisions; inclusion of socio-economic impacts in the Process; and the development of criteria to determine which policies and programs should be subjected to the Process. Some of the recommendations were subsequently reflected in the 1984 Guidelines Order; others have been implemented as a result of evolving practice; some have not been acted upon; and some need to be modified.

In carrying out the current review, CEAC has had the benefit of a number of specially commissioned studies of various aspects of EARP as well as the summary reports on the series of consultation meetings held by the Federal Environmental Assessment Review Office (FEARO) across Canada. In addition, recent reports from several international and national studies on environment -economy linkages and environmental impact assessment have provided a clearer picture of the context within which a reformed federal EARP could effectively function. It is with the intent of helping to understand this broader context that the Council has summarized some of the relevant highlights of these recent reports in the **Introduction**.

In making its recommendations, the Council is calling for much more than fine tuning of the current system. It is convinced, however, that the timing for a major review and structural overhaul is right. This overhaul includes adoption of specific environmental assessment legislation which will undoubtedly enhance the credibility of

the Process and will provide a basis to ensure that the Process is followed. In the longer term, once the integration of environmental considerations as a normal part of decision making becomes common-place, the need to impose regulatory powers will diminish. Furthermore, with respect to policy issues and major programs, our recommendation to modify the approach used for site-specific projects is designed to ensure that all factors contributing to sustainable development are taken into consideration, and is not intended to challenge the existing authority of other ministers of the Crown.

In this report the Council has opted for the term "environmental assessment" rather than "environmental impact assessment" because we believe it to be a more relevant description in today's circumstances. Because of current widespread usage, however, certain terms and their acronyms, eg. environmental impact assessment (EIA) and environmental impact statement (EIS), are used frequently in the text.

Throughout the text the term "Process" refers to the Environmental Assessment and Review Process in its current or revised form, and "Office" refers to the office responsible for administering the Process (currently FEARO).

INTRODUCTION

The Context

The public is demanding a greater involvement in decisions which affect its well-being, and governments are responding with increased consultation on many matters of public policy. Opinion polls indicate that environmental issues remain high on the list of priority concerns among Canadians.

Fifteen to twenty years ago it was widely thought that environmental protection and economic development were conflicting policy issues. Much has taken place in the intervening years so that today there is an increasing belief that environmental considerations must provide the integrating framework for all social and economic decision making.

Although many events have helped to shape current thinking, a few should be mentioned to provide a context for this report. The first was the 1972 United Nations Conference on the Human Environment held in Stockholm. One of the major outcomes of that Conference was the Stockholm Declaration containing some 26 Principles (UNCHE, 1972). Principle 13 stated: "In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit of their population". Even though this statement of principle recognized a linkage between environment and development, most saw it as a constraint upon development.

By 1980 however, with the publication of the World Conservation Strategy (IUCN, UNEP, WWF, 1980), the scientific evidence had accumulated, and public and political awareness had advanced to the point that the Strategy was strongly supported by IUCN, UNEP, WWF, FAO, and UNESCO and subsequently endorsed by many countries, including Canada. The Strategy explained the contribution of living resource conservation to human survival and to sustainable development; identified the priority conservation issues and the main requirements for dealing with them; and proposed effective ways for achieving the Strategy's aim which was to help advance the achievement of sustainable development through the conservation of living resources.

Another major milestone occurred in 1987 with the publication and the endorsement by the United Nations General Assembly of "Our Common Future", the Brundtland Commission Report (WCED, 1987). This report succinctly defined sustainable development as development which meets the needs of the present without compromising the ability of future generations to meet their own needs. The Commission concluded that "in its broadest sense, the strategy for sustainable development aims to promote harmony among human beings and between humanity and nature".

The report goes on to say: "pursuit of sustainable development requires:

- "a political system that secures effective citizen participation in decision making;
- "an economic system that is able to generate surpluses and technical knowledge on a self-reliant and sustained basis;
- "a social system that provides for solutions for the tensions arising from disharmonious development;
- "a production system that respects the obligation to preserve the ecological base for development;
- "a technological system that can search continuously for new solutions;
- "an international system that fosters sustainable patterns of trade and finance; and
- "an administrative system that is flexible and has the capacity for self-correction."

To these we would add a realistic appreciation of the ecosphere --the global environment-- and particularly its renewing processes that sustain all human endeavors.

The visit of the Brundtland Commission to Canada in 1986 led directly to the creation by the Canadian Council of Resource and Environment Ministers (CCREM) of a National Task Force on Environment and Economy composed of environment ministers, senior industry executives and representatives from environmental organizations and the academic community. The mandate of the Task Force was to foster and promote environmentally sound economic development. Their report (CCREM, 1987), published in September 1987 was unanimously endorsed in principle at the Meeting of First Ministers in Toronto in November 1987. The Task Force supported the development of conservation strategies as a basis for development which ensures that the utilization of resources today does not damage the prospects of future generations for maintaining or improving their use. Thus the remedial, reactive approach would be replaced by "anticipate and prevent" as the dominant concept underlying environment-economy integration. Among the many recommendations of the Task Force was a call for environment ministers, through CCREM, to work toward the streamlining of processes such as environmental assessment.

The Task Force also recommended that "all Ministers must become directly responsible and accountable for the environmental and economic consequences of their policies, legislation and programs". The report stated that this could be accomplished, in part, by the following activities and mechanisms:

- "Ensuring that all government processes for screening, review and evaluation of economic development projects include both socio - economic and environmental criteria."

- "Ensuring that every major report on economic development and every related Cabinet document demonstrates that the proposal or activity is economically and environmentally sound."

- "Ensuring that all government programs which give funding or loan guarantees to industry are conditional on meeting environmental standards."

- "Taking specific steps to open environmental, resource and economic development policy making and planning to greater public input."

- "Including methods for incorporating environmental assessment in all federal-provincial economic development agreements."

Furthermore, the Task Force recommended a new process of consultation - the establishment of Round Tables on Environment and Economy with participation from government, industry, environmental organizations, labour, academia, and aboriginal peoples. The Round Tables were not meant to challenge the authority of any existing office or institution; instead, "they would exert influence, founded on their credibility, their independence and their access to views of important sectors and levels of society". They were intended to be forums to candidly discuss environment-economy issues and make recommendations directly to the first ministers of their respective jurisdictions, and to report their conclusions directly to the public.

Another relevant event took place in September 1987: a seminar on environmental impact assessment that was organized within the framework of the Economic Commission for Europe (ECE), and held under the auspices of the Senior Advisers to ECE Governments on Environmental Problems (ECE/SAEP, 1987). Representatives from 17 countries, including Canada, participated and a number of draft recommendations to ECE Governments were made which *inter alia* included:

- that priority should be accorded to the implementation of EIA through legislation;

- that the legislation should contain provisions to promote integration of environmental considerations into planning and decision making processes;

- that the legislation should promote integrated environmental management in relation to sustainable economic development;

- that the legislation should apply to individual projects, and could allow for application to regional development schemes and programs as well as general policies and strategies;

- depending on the nature and degree of the assessed impacts, EIA should continue during the construction, operation and decommissioning phases of activities;

- EIA procedures should allow for direct involvement of the affected public, individuals, groups or organizations early in the EIA process as they can make important contributions to the identification of objectives, impacts and alternatives;

- EIA documentation should include the significance of the potential environmental impacts of the activity and its alternatives, as well as the socio-economic consequences of environmental change owing to the activity or its alternatives.

The Role of Environmental Assessment

This brief review leads to the inevitable conclusion that there is increasing recognition of positive close linkages between the environment and economic and social development issues, both nationally and internationally. The common thread running through these reports is the overriding concern that sustainable development be the central theme for the planning and undertaking of virtually all social and economic activities. In this context the Brundtland Commission definition of sustainable development is useful, namely "development which meets the needs of the present without compromising the ability of future generations to meet their own needs." It is to be understood that this means that both present and future generations are absolutely dependent on having a protected ecological base - without it there is no hope for the survival of human beings.

Environmental assessment is one of the essential tools that can and should be used to achieve the goal of sustainable development. The objective of environmental assessment is to promote the integration of environmental considerations as a primary part of all social and economic decision making for the short- and long-term benefit of society through an open, participatory and consistent process. As a tool, EIA is applicable at the early stages of planning as well as at the later stages of environmental management.

EIA in Practice

Environmental assessment is practised in many jurisdictions both within and outside Canada. It reflects the wide variety of social, economic and cultural conditions that exist in these various jurisdictions. In some situations it has been appropriate to develop specific EIA legislation; in other cases EIA has been developed within the framework of planning, environmental management or other legislation; and in yet other situations EIA is implemented through government policy directives. Whether or not EIA is applied to both public and private decision making varies with

the jurisdiction. Because of the federal nature of the governmental system in Canada, EIA practice is highly variable across the country.

At the federal level, an Environmental Assessment and Review Process (EARP) was first established by a Cabinet directive in 1973. This Process and its current and possible future status are the primary focus of this paper. It must be remembered, however, that this Process applies to only one segment of the total Canadian EIA activity, and that activity is itself only part (albeit a key part) of decision making designed to ensure survival of an environment within which life, including human beings, can thrive in the future.

Bearing in mind the recommendations contained in these recent national and international reports, and aware of public concern about the efficacy of certain aspects of EARP, it is timely, and consistent with the Government's stated policy for openness and consultation, to review and make recommendations on the nature, scope and effectiveness of the Process.

In meeting this challenge, the Canadian Environmental Advisory Council has implicitly used the following principles against which the present and any future Process can be judged:

- openness;
- comprehensiveness (environmental, social, economic, cultural);
- accountability;
- fairness;
- consistency;
- flexibility;
- timeliness; and
- consideration of short- and long-term implications.

Defining the Environment

It is useful to state clearly what we have in mind when we refer to the "environment". We believe that for environmental assessment purposes it is necessary to build upon and expand somewhat the definition of environment contained in Bill C-74 (The Canadian Environmental Protection Act). Our definition is:

-environment means the components of the Earth and includes:

(a) air, land and water;
(b) all layers of the atmosphere;
(c) all organic and living organisms;
(d) the interacting natural systems that include components referred to in parts (a) to (c), i.e., the biophysical environment; and
(e) those aspects of the human economic, social, cultural and health environments which interact directly and indirectly with the biophysical environment.

It is our view that this definition should be fundamental to all environmental assessment activity, but it is equally important that all aspects considered in a specific assessment should be directly related to the subject of that assessment.

A BRIEF HISTORY OF EARP

As a result of a Cabinet decision in late 1973, the federal Environmental Assessment and Review Process (EARP) was implemented on April 1, 1974 under the authority of the Minister of the Environment. The policy was intended to ensure that departments and agencies took environmental matters into account throughout the planning and implementation of projects, programs and activities for which federal funds were solicited or for which federal property was required. The environmental assessments were to be made and the results incorporated in the design, construction and operation of projects before irrevocable decisions were made. Assessments for all major undertakings that would have significant effects on the environment were to be submitted to the Department of the Environment for review. Proprietary crown corporations and regulatory agencies were invited to participate in the Process. The Minister of the Environment, in cooperation with other Ministers, was to establish procedures including arrangements for public comment and provision for public meetings when appropriate. An environmental assessment panel composed of qualified personnel from within the Department of the Environment, temporarily augmented by a representative from a department whose project was under review, was to administer the Process and make recommendations to the Minister of the Environment.

As a result of experience gained and comments received, the Process was amended in 1977: to allow for the appointment of panel members from other departments as well as from outside the federal public service; to ensure that sufficient information was provided to the Minister of the Environment to evaluate the effectiveness of the initial assessment stage of the Process; and to ensure that federal departments and agencies sought public response to their projects early in the planning stage.

In the Government Organization Act, 1979 dealing with the Department of the Environment, Section 6(1) provided for the Minister of the Environment to "initiate, recommend and undertake programs to ensure that new federal projects, programs and activities are assessed early in the planning process for potential adverse effects on the quality of the natural environment and that a further review is carried out of those projects, programs and activities that are found to have probable significant adverse effects, and the results thereof taken into account." Section 6(2) provided for the Minister of the Environment, with the approval of the Governor in Council, to "establish guidelines for use by departments, boards and agencies of the Government of Canada and, where appropriate, by corporations listed in Schedule D to the Financial Administration Act and regulatory bodies."

Pursuant to Section 6(2), the Government issued the 1984 Guidelines Respecting the Implementation of the Federal Policy on Environmental Assessment and Review (1984 Guidelines Order --see Annex 5). This Order defined terms, outlined the scope and application of the Process, and spelled out the responsibilities for the initiating department, the proponent, the Federal Environmental Assessment Review Office (FEARO), and other departments in both the initial assessment and public review

stages of the Process. The Order confirmed that self-assessment was the underlying concept behind the Process. It confirmed the evolving practice that environmental assessment should include not only the environmental effects, but also the social effects directly related to those environmental effects, as well as any effects that are external to Canadian territory. The Order also extended application of the Process to all corporations listed in Schedule D (now schedule C) of the Financial Administration Act and to any regulatory body, subject to certain qualifications concerning corporate policy, legal impediments and duplication. The Order left to the minister of the initiating department the key decision making responsibility for determining which proposals would be referred for public review, as well as deciding which panel recommendations to accept.

In June 1987 the Minister of the Environment tabled in Parliament Bill C-74, an Act respecting the protection of the environment and of human life and health. Part IV of the Act deals with federal departments, agencies, crown corporations, works, undertakings and lands. Section 52 provides for the Minister, with the approval of the Governor in Council, to establish guidelines; and Section 53 provides for the Governor in Council, on the recommendation of the Minister and with the concurrence of the "affected Minister", to make regulations for the protection of the environment where no other Act of Parliament expressly provides for such regulations. When and if this Act comes into force, Section 6(2) of the Organization Act, 1979 will be repealed.

Also in June 1987 the Minister of the Environment submitted a memorandum to Cabinet seeking authority to carry out broad-based consultations with respect to reforming EARP.

Cabinet agreed on the need for reform and authorized the Minister to prepare, in consultation with other departments, a discussion paper as a basis for widespread consultations, and subsequently to report back to Cabinet with specific proposals.

The Discussion Paper (FEARO, 1987b) was prepared and served as a basis for a series of public consultations from coast to coast and in the far North. In addition, a number of background papers were prepared dealing with specific aspects of EARP such as: process and structure; activities; authorities; and public hearing procedures. Each paper examined the current practice and considered various options for reform.

The weaknesses in the current Process that were identified included the following:

- the legal basis that allows EARP to require social impact assessment is in doubt;

- there is too much ambiguity and varying interpretation in the requirements;

- implementation among departments is highly variable;

- it is very difficult for the public to influence the initial assessment stage;
- some federal entities are not included in the scope and application;
- regulatory hearings may duplicate EARP procedures; and
- the role of the Minister of the Environment is very weak.

MAJOR CHARACTERISTICS OF THE PROCESS

(i) Authority

As already mentioned, the Government Organization Act, 1979, Sections 6(1) and 6(2), provide authority for the Minister of the Environment to undertake programs such as EARP, including the promulgation of guidelines such as the 1984 Guidelines Order. Section 5 of the Act defines the duties, powers and functions of the Minister as relating to: the preservation and enhancement of the quality of the natural environment, including water, air and soil quality; renewable resources, including the forest resources of Canada (subsequently transferred to Agriculture), migratory birds and other non-domestic flora and fauna; water; meteorology; the enforcement of any rules or regulations made by the International Joint Commission as they relate to the preservation and enhancement of the quality of the natural environment; and coordination of the policies and programs of the Government of Canada respecting the preservation and enhancement of the quality of the natural environment.

A number of concerns have been raised about the nature, extent and implementation of this authority as it relates to environmental assessment. Included among these concerns are:

- the legislation does not provide specific authority for making regulations governing environmental assessment;
- the legislation does not provide authority to ensure that guidelines are followed, i.e. there is no provision for auditing;
- since the emphasis in the legislation is on the preservation and enhancement of the quality of the natural environment, there is some doubt about the legal basis for including "social impacts directly related to environmental effects" in the 1984 Guidelines Order;
- there is no provision for anyone other than the initiating department to trigger the Process;
- the term "Guidelines Order" seems contradictory - a "guideline" does not imply enforceability and yet "order" does, and adding to the confusion is the use of the imperative "shall";
- the absence of a clear legislative base for environmental assessment casts considerable doubt on the credibility of the Process and about the commitment of the Government to sound environmental planning and preservation.

An examination of various forms of "authority" for an environmental assessment process has been made (Ross, 1988). This study included consideration of specific environmental assessment legislation, a government directive or guideline, reliance on

provisions in other statutes, and the assignment to an individual minister of discretionary powers concerning the application of environmental assessment procedures for all government undertakings.

Authority for environmental assessment varies from province to province within Canada, and is equally varied in other countries which have assessment procedures. Such varied practices clearly do not constrain the choice of authority for a federal process in Canada.

There is a widely held perception that the type of authority selected reflects the degree of commitment of the government to sound environmental planning and management. Under the present Guidelines Order, the variability and inconsistency in implementation from department to department is cited as evidence of a lack of commitment. At the same time, there is some concern that specific, detailed environmental assessment legislation would lead to a system which lacks flexibility to respond proportionally to the needs which can vary considerably from case to case, and this would contribute to inefficiency. It could also lead to an extensive use of litigation as a means of resolving disputes.

Where reliance for authority is based on other statutes there is a strong prospect that there will be inconsistent and inequitable application and general confusion as to who has what responsibility.

One of the strengths of the existing procedure (under the Guidelines Order) has been the promotion of self-assessment as the underlying philosophy. With this approach, there should be a gradually increasing knowledge base and understanding of the importance and usefulness of incorporating environmental assessment into all decision making. Any move to centralize the decision making for environmental assessments by allocating discretionary powers to a single minister would defeat such objectives, and would also be interpreted by some as simply an attempt to gain more power by, or for that minister.

Council has considered these various options and, on balance, has concluded that specific environmental assessment legislation is the preferred option. It would certainly go a long way toward ensuring credibility in a reformed Process. It is believed that such legislation can be prepared and that sufficient flexibility can be maintained by putting some parts of the Process in regulations. The Process would be strengthened considerably, and this would be the most direct way of ensuring that directly relevant social impacts are a legitimate part of the Process.

1. **It is recommended that specific environmental assessment legislation be developed at the federal level and that it include provisions for the establishment of regulations, audit procedures, the assessment of social impacts directly relevant to potential environmental effects, and authority for the Minister responsible for the reformed Process to trigger the Process on behalf of the environment when circumstances warrant.**

(ii) Institutional Applicability

As indicated earlier, the 1984 Guidelines Order applies to any department, board or agency of the Government of Canada; and to any corporation listed in Schedule D (now C) to the Financial Administration Act, and any regulatory body, with specific qualifications concerning corporation policy, legislative authority, legal impediments and duplication.

Evidence makes it quite clear that there has been great variability from department to department in implementation of the Guidelines Order. Table 1 extends information compiled in the background paper "Activities" (Gamble et al., 1987b) by including information contained in Edition 3 of FEARO's Bulletin of Initial Assessment Decisions (FEARO, 1987a).

Table 1

Data Derived from Bulletin of Initial Assessment Decisions
Covering the period from April 1, 1986 to March 31, 1987

	Bulletin 1	Bulletin 2	Bulletin 3	Total
Proposal may proceed: IEE not necessary	304(92.1%)	478(92.6%)	291(81.7%)	1073(89.3%)
IEE Required	19(5.8%)	36(7.0%)	57(16%)	112(9.3%)
Public review required	2(0.6%)*	1(0.2%)*	0(0.0%)*	3(0.2%)*
Proposal rejected: modify or abandon	5(1.5%)	1(0.2%)	8(2.2%)	14(1.2%)
Total	330(100%)	516(100%)	356(100%)	1202(100%)

* These figures have been corrected by recent information from FEARO.

These totals have come from information provided by the following departments/ agencies: AECL, CIDA, COGLA, DRIE, EC, EMR, INAC, NCC, ND, PWC and TC. Notable by their absence are Agriculture Canada and Fisheries and Oceans.

Of the 112 proposals advanced to the IEE stage, 86 were screened by TC, 12 by INAC, six by ND, three by NCC, two by EMR, two by PWC, and one by EC.

The three proposals referred for public review were screened by EMR, INAC and ND.

Of the 14 proposals rejected in their initial form, eight were screened by CIDA, five by NCC and one by EC.

Implementation procedures and/or exclusion lists have been developed by relatively few departments/agencies. Information provided by FEARO indicated that at the end of 1987 the following had some such written documentation: Agriculture (Canadian Forestry Service), Agriculture (PFRA), CIDA, EMR, EC (AES, ECS, Parks), INAC (Northern Affairs), NCC, ND, PWC, TC. Of these, three (PFRA, CIDA, and Parks) have received FEARO's concurrence, as provided for in the 1984 Guidelines Order (Para. 16). The rest remain in draft form. Note the absence of DFO, DRIE, AECL, and COGLA.

Of some 48 crown corporations listed in Schedule C to the Financial Administration Act, it would be reasonable to expect that about half might be involved in activities which would justify the application of the Process. Since the first publication by FEARO of its Bulletin of Initial Assessment Decisions going back to April 1, 1986, information has been provided by only one crown corporation (AECL) on one project.

These deficiencies can be attributed in part to the application of the specific qualification "loopholes" in the Guidelines Order, in part to vagueness in some of the definitions in the Guidelines Order, in part to the relative absence of written operating procedures as called for in the Guidelines Order, and in part to a lack of political will to make the Process work. The net effect is that, despite the successful application of EARP in a small number of cases, there is a growing lack of credibility in the Process as a whole.

In terms of the previously stated objective of environmental assessment (to become an integral part of decision making):

2. **It is recommended that the reformed Process apply to all departments, boards and agencies and all crown corporations and regulatory bodies without qualification, even if this means amendments to existing legislation.**

Provision could be made in the proposed new environmental assessment legislation for individual departments, agencies, crown corporations and regulatory bodies to seek exemption from the Process through the application of exclusion criteria contained in regulations. This, however, should only take place as the result of well-documented justification defended in a public forum, and be subject to periodic review. Regulatory bodies might, for example, seek exemption on the basis of prescribed procedures requiring applicants to demonstrate that they have undertaken an adequate environmental assessment as part of their application for a licence or permit.

iii) Scope of Application

The 1984 Guidelines Order applies to any proposal:

- to be undertaken directly by an initiating department;

- that may have an environmental effect in an area of federal responsibility;
- for which the Government of Canada makes a financial commitment; or
- that is located on lands (including the off-shore) that are administered by the Government of Canada;

and "proposal" is defined to include any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility.

The Order requires consideration of potential environmental effects, including directly related social effects, and any effects external to Canadian territory. The Order also provides, subject to ministerial agreement, for consideration of the general socio-economic effects of the proposal and the technology assessment of, and need for the proposal. The Order provides for the self assessment process to include consideration of the concerns of the public regarding the proposal and its potential environmental effects.

To date the majority of the proposals which have been subjected to the Process have been highly site-specific projects. In the background paper "Activities" (Gamble et al., 1987b) a number of management activities and broad policy initiatives, particularly those related to natural resource matters, were identified as logical candidates for the Process that had not been subjected to it.

Experience has shown that there has been misunderstanding or at least inconsistency in the interpretation and application of terms like "area of federal responsibility", "financial commitment" and "lands administered by the Government of Canada".

In addition, the Process has been criticized in relation to the self assessment concept because (a) this creates a conflict of interest situation for the initiating department, and (b) there is no mechanism to permit an override of the initial decision.

Keeping in mind the objective of having environmental assessment become an integral part of decision making:

3. **It is recommended that self-assessment remain as the central core of any reformed Process.**

To ensure that this is done thoroughly, comprehensively and consistently:

4. **It is recommended that regulations provide for an independent audit of the initial assessment stage by the Office responsible for the reformed Process.**

It is evident that, generally, the requirements for carrying out a detailed environmental assessment for a site-specific project can be laid out more clearly than is the case for broader policy and management questions.

5. **It is recommended that a reformed Process should treat site-specific projects and other conceptual proposals separately.**

6. **It is recommended that detailed procedures for handling site-specific projects be outlined in regulations under the proposed new environmental assessment act.**

In this connection, careful consideration will have to be given to the relative merits of spelling out operational procedures in greater or lesser detail in the regulations. On the one hand, there is less room for misinterpretation or abuse of the system if the procedures are highly detailed. On the other hand, there is a consequential sacrifice of flexibility to respond most appropriately to varying situations and circumstances. It will, however, be important to provide realistic time periods for each step in the Process.

With respect to those broad policy and management issues (i.e. conceptual proposals) which require Cabinet approval:

7. **It is recommended that:**

> **(a) provision be made in the Privy Council Office (PCO) for an assistant secretary to the Cabinet for environmental considerations (comparable to other assistant secretary positions);**

For example, there are already assistant secretaries for economic and regional development policy, foreign and defence policy and social development.

> **(b) provision be made to add as a standard requirement for all Cabinet submissions a section on "environmental considerations" including, when appropriate, more detailed information in an annex which would be intended for subsequent release as a public document;**
>
> **(c) the assistant secretary for environmental considerations be assigned a key role in deciding whether a specific Cabinet submission should proceed directly to a Cabinet committee or to a new review mechanism as mentioned in (d);**
>
> **(d) a new review mechanism be established (along the lines of the CCREM Task Force proposed "Round Tables") with representation from the Government, national non-governmental organizations, labour, academic and business associations to consider those broad policy and management issues referred by the assistant secretary for environmental considerations; and**
>
> **(e) the new review mechanism be empowered to refer the issue, or aspects thereof, for further study by a senior group or parliamentary committee, or, in certain circumstances, for panel review under the reformed Process.**

It would be reasonable to expect that those policies which potentially have a direct impact on environmental quality would be referred to the reformed Process, e.g., initiatives from Environment Canada and initiatives in the fields of agriculture, forestry, transportation, fisheries, land use and energy. Macro-economic policy initiatives would seem to be more appropriately referred to the senior group or to a parliamentary committee.

(iv) Stages of Application

As provided for in the 1984 Guidelines Order, the current Environmental Assessment and Review Process is a multi-stage process with self assessment by the initiating department as the first step and central core. All proposals are to be screened; some are allowed to proceed without further review although conditions may be attached; some are immediately referred for a formal panel review; some are referred for an Initial Environmental Evaluation (IEE); and some may be rejected outright. The IEE requires more careful documentation and evaluation than was provided for in the initial screening but less than that required for a formal panel review. The IEE is still the responsibility of the initiating department and that evaluation can lead to one of three decisions: proceed, reject or refer for a formal panel review. The initiating department is to ensure that the public has access to the information on, and an opportunity to respond to, the proposal at the conclusion of this initial assessment phase, and before mitigation measures are implemented or the proposal has been referred for a formal panel review. Periodic reports are required.

The formal panel review involves: setting the terms of reference; selecting panel members; developing guidelines for an Environmental Impact Statement (EIS); public hearings to examine the EIS; and the preparation of a report and recommendations. The Minister of the Environment appoints panel members; the Minister of the Environment in consultation with the minister of the initiating department issues the terms of reference; and the panel report is submitted to both ministers. The minister of the initiating department decides the extent to which the panel's recommendations will be accepted. The panel hearings are conducted in a non-judicial and informal but structured manner. There are requirements for public information and public consultation at several stages in this formal review, and all information submitted to a panel is public information.

As was shown in the section of this report on **Institutional Applicability**, only minor progress has been made in the development of exclusion/inclusion lists and written procedures, and the total absence of periodic reports from many departments suggests a great deal of inconsistency in the application of the Process. Furthermore, there is no provision for auditing the performance of departments or taking corrective actions, if needed. Suggestions have been made that efficiency could be improved by introducing into the Process, in certain circumstances, alternative procedures such as a conflict resolution mechanism. There is concern about the absence of the role of the Minister of the Environment in deciding the extent to

which panel recommendations will be accepted and implemented. Also the whole follow-up, feed-back aspect of the Process is generally considered inadequate.

For dealing with site-specific projects in any reformed Process:

8. **It is recommended that the Office responsible for the administration of the Process be assigned the primary responsibility, in consultation with initiating departments, for the preparation of environmental screening criteria, exclusion lists, inclusion lists and initial assessment operating procedures.**

9. **It is recommended that the environmental screening criteria used for site-specific projects also be used as a basis for the preparation of the environmental considerations section of documents concerning the development of programs and policies.**

10. **It is recommended that a reformed Process provide for conflict resolution mechanisms as alternatives or precursors to a full-scale panel review in special situations, for example, where there are divergent views on a relatively few specific points. A particular mechanism e.g., environmental mediation, stakeholders' discussion groups, etc. should be selected by mutual agreement between the minister of the initiating department and the Minister of the Environment.**

An environmental mediator might be useful, for example, when two experts disagree on the relative merits of two (or more) alternative technologies forming part of the proposal, but otherwise they are basically in agreement. Another example might relate to differing views between the proponent and a community organization on the nature and extent of the social impact that a proposal might have on a community.

Since failure to have adequate follow-up procedures has been identified as one of the major concerns:

11. **It is recommended that in any reformed Process greater emphasis be given to the post-implementation stage to ensure that there is an independent audit of the monitoring and follow-up program, and that the results are used to help improve the design and operation of future projects.**

A spin-off benefit will be improving the accuracy and relevance of future impact assessment predictions. This recommendation applies equally to all projects regardless of which part of the Process they have gone through.

(v) Public Involvement

The 1984 Guidelines Order requires the initiating department to take public concerns into account in its initial assessment review, and to ensure, after this review, that the public have access to information on, and an opportunity to respond to, the proposal. FEARO is also charged with publishing a summary of initial

assessment decisions based on periodic reports from initiating departments. The Order also provides for public review of EIS guidelines; for the panel and the proponent to implement public information programs; for all information submitted to a panel to become public information; for time for the public to examine and comment on such information before a public hearing; and for release of the panel report to the public.

Overall, public involvement during the panel review stage is not receiving a large amount of criticism, and the introduction of public "scoping" sessions to assist in the development of EIS guidelines has generally been regarded as a further improvement in this stage. Nevertheless, refinements along the lines suggested in the Walsh Report on Public Hearing Procedures could be introduced (Walsh, 1988). The bulk of the criticism has been levelled at the inadequate and inconsistent public involvement in the initial stages, and in the handling of panel recommendations and post-implementation follow-up.

12. It is recommended that in any reformed Process there be public consultation in the development of generic initial screening criteria which would then be used as a basis for the development of screening criteria and exclusion/inclusion lists suited to individual initiating department mandates.

13. It is recommended that, following the initial assessment, the information package made available for the public be based on the screening criteria and generally include a description of the proposal, its need and alternatives, and an account of the potential environmental consequences as described in the IEE. If the decision is to proceed without further review, the information should also contain a full description of any mitigating measures and proposed post-implementation follow-up. A specified time period should be allowed for response before any work on the proposal is undertaken.

Documentation relating to any project that was allowed to proceed without even an IEE would be minimal, doing little more than informing the public that a particular project had been approved.

14. It is recommended that the periodic (perhaps quarterly) initial assessment decision reports prepared by the Office be based on information provided by initiating departments, and include the above-mentioned information package as well as a summary of the public response to that information.

In the event that an initial assessment decision has been made to proceed with a proposal:

15. It is recommended that:

    (a) if twelve or more members of the public are sufficiently concerned that the potential environmental effects have not been adequately considered in the initial assessment decision, they may appeal (within a

specified time from the public announcement of the decision to proceed- say 30 days) to the Minister of the Environment to have undertaken a more detailed examination of the proposal; and

(b) if, after review, the Minister considers it appropriate, he be authorized to seek a court injunction to stop the proposal from proceeding further.

16. It is recommended that, for those policy and program proposals which are not referred by the new "review mechanism" for handling through the reformed Process, there be provision for public consultation either through some public forum process (e.g., parliamentary committee) or through the publication of a Cabinet document background paper outlining the relevant environmental considerations.

In the event that a conflict resolution mechanism is chosen rather than referral for a panel review:

17. It is recommended that the report of conflict resolution deliberations be made public and, if the decision is to proceed, that the reports of any post-implementation follow-up and monitoring also be made public.

For full scale panel reviews:

18. It is recommended that the principles used as a basis for selecting panel members in the current Process be retained in any reformed Process.

19. It is recommended that the terms of reference for each panel include specification of time periods for certain steps in the panel review, and that these be elaborated on by the panel in producing its own operating procedures, bearing in mind that not all aspects are within the control of the panel (for example, the time for the proponent to prepare the EIS).

20. It is recommended that panels have the right to seek amendments to their terms of reference if sufficient public concern is expressed during the public scoping sessions designed to identify the major concerns which need to be addressed in the guidelines for the environmental impact statement (EIS).

21. It is recommended that panel reports be made public within a pre-determined time period (perhaps 30 days) following their preparation.

22. It is recommended that decisions flowing from the panel recommendations be made public as a "Record of Decision", along with the rationale for accepting or rejecting the recommendations in whole or in part.

23. It is recommended that the analysis of results from any post-implementation monitoring and follow-up program be made available to the public and be used for improvement in the general handling of future projects.

(vi) Decision Making

In the current Process there are relatively few points where decision making is required. All decision making in the initial assessment stage is retained by the minister of the initiating department. The Minister of the Environment appoints panel members and, after consultation with the minister of the initiating department, issues the terms of reference and makes the panel report public. The minister of the initiating department, in cooperation with the minister of any other department or agency to whom the recommendations are directed, decides the extent to which the panel recommendations will be accepted and incorporated into the implementation plan and follow-up for the proposal.

The major weakness in the current Process is the absence of any checks and balances to ensure compliance and consistency. The responsibility of the Minister of the Environment is limited essentially to administrative matters with no authority to override decisions that are not environmentally sound or consistent with the sustainable development objective.

In the light of the earlier proposal that policies and programs be channelled through a new special "review mechanism":

24. It is recommended that the Minister of the Environment be a standing member of the new review mechanism (for dealing with policies and programs).

25. It is recommended that, as one possible outcome of the audit of initial assessment decisions, the Minister of the Environment be empowered to override the decision of the minister of the initiating department if there is a need for further review.

26. It is recommended that:

    (a) the Minister of the Environment share with the minister of the initiating department the responsibility for the selection of an alternative conflict resolution mechanism, if such is appropriate, and the decision(s) which may be required as a result of that mechanism; and

    (b)in the event that the two ministers do not agree, the views of the Minister of the Environment should prevail.

27. It is recommended that:

    (a) the Minister of the Environment share with the minister of the initiating department the responsibility for the decision(s) which will be required following receipt of panel recommendations; and

    (b) in the event that the two ministers do not agree, the Minister of the Environment take the matter to Cabinet for resolution.

28. It is recommended that, regardless of any other regulatory requirements, site-specific projects be allowed to proceed only in accordance with the "Record of Decision" reached by the Minister of the Environment and the minister of the initiating department following receipt of the panel report.

29. It is recommended that, in the audit of the post-implementation monitoring and follow-up, the Minister of the Environment have the authority to require modification to operational procedures or implementation of corrective actions as needed to maintain environmental quality.

30. It is recommended that the Minister of the Environment have the authority to initiate an environmental assessment directly in certain circumstances involving federal responsibility, for example, in certain interjurisdictional matters, transboundary issues, and inter-basin water transfers.

SPECIAL ISSUES

(i) Confidentiality

The 1984 Guidelines Order refers to access to information in accordance with the spirit and principles of the Access to Information Act. Refusal to provide information could be based on factors such as: proprietary business information; national security interests; classified Cabinet information; intergovernmental agreements; and international negotiating information. The Access to Information Act provides for an override of all commercial exemptions, except trade secrets, if such disclosure would be in the public interest as it relates to public health, public safety or protection of the environment. The public interest must clearly outweigh in importance the financial loss or gain to, prejudice to the competitive position of, or interference with contractual or other negotiations, of a third party. The 1984 Order also specifies that all information submitted to a panel should become public information.

31. **It is recommended that the underlying concept that all information submitted to a panel should become public information remain essentially as it is.**

In those circumstances when information is being withheld for reasons of confidentiality:

32. **It is recommended that provision be made for an independent arbiter to rule on the relative importance of the "public interest" and, in certain restricted circumstances, for a "closed door" session to be held to examine confidential information with only the conclusions concerning environmental significance being reported publicly.**

In the latter case, the panel members would have to be sworn to respect "confidentiality".

(ii) Duplication

This issue focuses on public hearings and the desire to avoid wasting time and effort in the holding of essentially similar hearings to meet different agency requirements. There are several possibilities where duplication of this kind could occur: where a proposal is subject to additional environmental regulation e.g., under the National Energy Board; where the fulfillment of the mandate of an initiating department also calls for public hearings; and where a proposal involves an activity subject to a federal-provincial, federal-territorial, or international agreement. The 1984 Guidelines Order specifically stated that where a proposal is subject to environmental regulation independently of the Process, duplication in terms of public reviews was to be avoided. This was qualified by recognizing that the public review under the Process should be used as a planning tool early in the development of the

proposal, and that the results should be made available for use in any regulatory deliberations respecting the proposal.

Most of the attention, to date, has focussed on the question of duplication in the hearings under the Process and the hearings to meet the environmental regulation requirements of the National Energy Board. Despite efforts to find a mutually satisfactory solution, the conditions required for the respective hearings are sufficiently different that there seems little hope of reaching an agreement.

33. **It is recommended that regulatory bodies such as the NEB take into account the "Record of Decision" flowing from the panel recommendations under the new environmental assessment legislation.**

This would not eliminate two sets of hearings but the requirements of both processes would have to be met before the proposal could proceed, and the hearings would have been held at different stages in the development of the proposal.

34. **It is recommended that the Office responsible for the administration of a reformed Process negotiate agreements with other governments and bodies where duplication might occur, with a particular view of minimising duplication by harmonising practices or adopting the principle of "equivalency" where proposals involve overlapping mandates or jurisdictions.**

(iii) Cumulative Effects

Concern has been expressed that significant adverse environmental effects may be associated with the cumulative impact of a number of proposals each one of which could have relatively little effect. This could occur as a result of a number of similar proposals, but it could also occur as a result of quite different proposals, and the cumulative effects need not be limited to effects attributable only to proposals for which the Government of Canada has the decision making responsibility.

While this problem is very real and potentially serious, such studies should be part of the ongoing programs of environment departments, with the results being published on a regular basis and aggregated periodically in reports such as state of the environment reports (local, provincial and/or national).

35. **It is recommended that cumulative effects studies not be considered as an ongoing responsibility under a reformed Process.**

At the same time it is recognized that consideration of the potential contribution to future cumulative effects by a specific project, as well as the contribution of existing cumulative effects to the environmental assessment of a specific project, are legitimate concerns for a panel carrying out an environmental assessment of that project.

36. **It is recommended that time and spatial boundaries, within which cumulative effects should be considered, be clearly established in the terms of reference for a particular panel.**

37. **It is recommended that, in the absence of relevant cumulative effects information, a panel be authorised to commission a special study of pertinent cumulative effects, if such information is considered essential in its deliberations.**

(iv) Regional/Area-wide Assessments

This issue is closely related to the Cumulative Effects issue and has a particular geographic focus. Again the effects are unlikely to be limited to effects attributable only to proposals for which the Government of Canada has the decision making responsibility.

Although there may be special circumstances involving only federal decision making where a reformed Process could be applied to a regional assessment, this is not likely to be the general case.

38. **It is recommended that, along with efforts to harmonise EIA processes and to negotiate interjurisdictional environmental assessment agreements, the Government of Canada encourage collaborative regional planning and assessment studies to identify those ecological characteristics which are most susceptible to environmental disturbance, and those localities which are already environmentally stressed and the nature of those stresses.**

Such studies should eventually cover the whole of the country. The information generated will help focus attention on the critical issues when specific proposals are being assessed for their environmental impact.

(v) Application to Foreign Aid

The primary concern here is that projects undertaken in Third World countries with financial assistance from Canada be environmentally sound. As an agency of the Government of Canada, CIDA is subject to the 1984 Guidelines Order. Part of CIDA's budget is allocated on a multilateral basis to support organizations such as the World Bank, regional development banks, and the United Nations Development Program which in turn use these funds to assist Third World countries. The Government of Canada also provides substantial support to a variety of other United Nations specialized agencies such as the FAO, the WHO and the UNESCO which also support a wide variety of programs in Third World countries. Another part of CIDA's budget is allocated on a bilateral basis to support specific activities in certain countries on a project by project basis.

It is almost impossible to obtain information that would permit a meaningful evaluation of whether or not the multilateral funds are being expended in an

environmentally sound way. The best that can be hoped for is that the multilateral organizations adopt and utilize internationally approved environmental assessment methods such as those being implemented by the World Bank in its project and program reviews.

39. **It is recommended that, in the interest of global sustainable development, the Government of Canada continue to work in all possible international forums for the development and adoption of sound environmental assessment methodologies.**

In the case of CIDA's bilateral aid activities, it is possible, at least in theory, to see a link between project approval and a reformed Process. At the same time, it is important to recognize that the economic, social and cultural conditions of aid-recipient countries are vastly different from conditions in Canada. Aside from the logistics and diplomatic implications, there would be little point in contemplating sending a Canadian panel to hold hearings in another country. Attempting to force another country to constitute a panel to go through a Canadian-style public hearing would be ludicrous. Of course, in some aid-recipient countries environmental assessment is already being undertaken and is being increasingly recognized as a valuable contribution to their own decision making. This should be encouraged whenever possible. Canadians have a right to know that their taxes are not being spent in ways which will lead to global environmental deterioration.

CIDA has announced its intention to apply environmental assessment procedures more rigorously than it has in the past, and this is a welcome sign. Under present circumstances it would be very difficult to evaluate the effectiveness of this intent as under the Access to Information Act even basic information cannot be released without the consent of the recipient country. It is understood that, when projects are being considered for Canadian aid support, they are normally examined and reported on in pre-feasibility and feasibility documents comparable at least to IEE's.

40. **It is recommended that CIDA's bilateral aid policy be strengthened by including a requirement to release, for public review in Canada, information about the environmental assessment for each project prior to actual commitment of funds.**

41. **It is recommended that the above policy be widely publicised and that aid negotiations not even begin until the recipient country accepts this condition.**

(vi) Formal/Informal Hearings

The 1984 Guidelines Order clearly states that all hearings shall be public hearings conducted in a non-judicial and informal but structured manner, and that witnesses may be questioned but not sworn or subpoenaed.

These conditions have been considered by many as real virtues of the current Process. They are seen as encouraging individual members of the public to express their views and convictions in a way that would never occur if they were subject to

cross examination by legal counsel. This degree of informality is seen as necessary to put into perspective related social concerns and therefore help to balance the preponderance of often overpowering technical data. It is argued that appropriate questioning by the panel and other experts can resolve situations when different views are expressed. Some people have said that, when formal and informal hearings are combined in a single hearing process, the informal hearings would tend to be given less weight by the panel in its deliberations.

There are, however, those who believe quite strongly that a more formal hearing procedure involving the swearing of witnesses, cross-examination and the power of subpoena would produce both a more efficient and a more effective hearing process. Such a formal process would: exert discipline on the participants (there would be no room for emotion); it would reflect rigour in the thorough preparation of documentation; all parties would take the Process seriously and would be accountable for their contributions; and all parties would be treated fairly and equitably.

Generally, the informal hearing procedure seems to have worked well in the past and contributes significantly to the present credibility of the Process. One important consideration is that a court of law is concerned with a past event, whereas an environmental assessment hearing is concerned with a potential future event. Also the nature of biophysical and social/cultural impacts is such that "facts" are rare - scientific opinions vary from expert to expert. There is always, of necessity, a judgmental aspect to EIA. There may, however, be circumstances in the future when a more formal process would be important and appropriate.

42. It is recommended that the proposed environmental assessment legislation make provision, under special circumstances, for the holding of formal hearings including the swearing of witnesses, cross-examination and the power of subpoena.

This might be appropriate, for example, when a project is subsequently to go before the National Energy Board. The results of a formal environmental assessment hearing would likely be more acceptable to the National Energy Board hearing.

43. It is recommended that, under a reformed Process, the panel should decide, as appropriate, on the use of formal and/or informal hearings.

It may be more appropriate to hold formal technical hearings and informal community hearings in some circumstances.

The decision concerning the form of procedures should be made by panels early in the panel part of the Process. The form of procedure adopted would then be publicized as procedural rules for the hearing.

44. It is recommended that provision be made so that, if deemed necessary by the panel, the power of subpoena could be exercised regardless of the form of procedure selected for the panel review.

45. **It is recommended that, regardless of the form of procedure selected, provision be made so that any person who indicates an interest in the proposal will be granted "standing" and will have an opportunity to be heard.**

(vii) Reporting Relationships

Under the present Process the Executive Chairman of the Federal Environmental Assessment Review Office (FEARO) is a member of the public service reporting directly to the Minister of the Environment. FEARO is independent of Environment Canada although both organizations report to Parliament through the same Minister.

The view has been expressed that this situation places the Minister of the Environment in a conflict of interest position when it comes to environmental assessment of proposals developed by Environment Canada, or when the project impacts on the Minister's constituency. This is an important consideration. At the same time, it is important that the spokesman for FEARO in Cabinet and in Parliament be someone who is knowledgeable and committed to environmental quality.

46. **It is recommended that the Office administering any reformed Process continue to report directly to the Minister of the Environment and through him to Parliament.**

47. **It is recommended that the Executive Chairman of the administering Office be an Order-in-Council appointment at the deputy minister level.**

(viii) Intervenor Funding

Although the need for intervenor funding has been addressed in the recommendation of various EARP panels, the issue has not been resolved as part of any overall policy and was not referred to in the 1984 Guidelines Order.

Intervenor funding for the Beaufort Sea EARP was arranged with funds provided by the Department of Indian and Northern Affairs and administered by a small committee independent of the panel. An evaluation report (Nordicity Group Ltd., 1985) recommended that, in future, preference be given to communities and interests which are potentially directly affected by a proposal under review.

In an attempt to develop a more rational approach to the general question of intervenor funding as it affected various government activities, the Ministry of State for Social Development (MSSD) examined this issue several years ago but was disbanded before action could be taken, and there is still no overall government policy on intervenor funding. Nevertheless, some of the points made at that time are valuable.

The argument for encouraging intervenors is based on the belief that in a democracy broad public participation is a "good" in, and of itself. It is argued that

participation assists in developing a public understanding of government decisions while at the same time improving the quality of decisions made by providing information and perceptions not otherwise accessible to decision makers. The provision of assistance is required to redress the indisputable imbalance of resources among potential participants and to place them on a more equal footing. On the other hand, some have argued that assistance to intervenors would dilute both the concept of responsibility and the process of accountability, and so diminish the effectiveness of the system. They argue that some additional effort must be demanded of those wishing to participate if government and its agencies are not to be brought to a standstill by the casual and frivolous.

Even with acceptance of the principle that intervenor funding is justified, there are many questions to be answered: Who should be funded? Who should pay? Should funding cover all or only part of the expenditures? Who should administer the program? What about accountability? Can a policy framework be developed that applies to all government activities including a reformed Process?

48. **It is recommended that intervenor funding be recognized as a legitimate and integral part of any reformed Process.**

49. **It is recommended that a policy framework and procedures designed specifically for intervenor funding in a reformed Process be developed.**

50. **It is recommended that the budget for the Office for the reformed Process include provision for limited funding for intervenors in particular circumstances, for example, costs involved in mediation, or initial costs pending allocation of funds from other sources.**

51. **It is recommended that the bulk of intervenor funding in relation to specific proposals come from initiating departments and proponents, and these funds should be available as soon as there is a clear indication that the proposal is to be referred for public review.**

Such funding should cover the entire Process and not be subject to arbitrary reduction during the Process.

52. **It is recommended that the administration of intervenor funds be handled by a small committee independent of the panel using published selection and accountability criteria.**

ANNEX 1

MEMBERSHIP
CANADIAN ENVIRONMENTAL ADVISORY COUNCIL
February 1988

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Peterborough, Ontario

Dr. S. A. M. Conover
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Saskatoon, Saskatchewan

Council Staff
Mr. Max McConnell, Executive Director
Dr. E. Fred Roots, Science Advisor
Ms. Veena Halliwell, Project Coordinator

ANNEX 2

PARTICIPANTS
January 7-8, CEAC Workshop
Toronto

Members

Dr. R. J. D. Page, Chairman
Dr. S. A. M. Conover, Vice-Chairperson
Dr. J. S. Rowe, Vice-Chairperson
Dr. P. M. Chapman
Mr. J. D. Cook
Dr. L. Giroux

Former Members

Mr. T. Beck, Chairman Emeritus, Calgary, Alberta
Dr. D. A. Chant, Ontario Waste Management Corporation, Toronto, Ontario
Ms. S. Holtz, Ecology Action Centre, Halifax, Nova Scotia
Mr. B. Hubert, Boreal Ecology Services, Yellowknife, N.W.T.
Mr. A. R. Lucas, Canadian Institute of Resource Law, University of Calgary, Calgary, Alberta

Guests

Mr. R. G. Connelly, Federal Environmental Assessment Review Office, Ottawa, Ontario
Mr. W. A. Ross, Faculty of Environmental Design, University of Calgary, Calgary, Alberta

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Mr. M. McConnell, Executive Director, CEAC
Dr. E. F. Roots, Science Advisor, CEAC
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ANNEX 3

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ANNEX 4

ACRONYMS

AECL	Atomic Energy of Canada Ltd.
AES	Atmospheric Environment Service
CCREM	Canadian Council of Resource and Environment Ministers
CEAC	Canadian Environmental Advisory Council
CEARC	Canadian Environmental Assessment Research Council
CIDA	Canadian International Development Agency
COGLA	Canadian Oil and Gas Lands Administration
DRIE	Department of Regional Industrial Expansion
EARP	Environmental Assessment and Review Process
EC	Environment Canada
ECE	Economic Commission for Europe
ECS	Environmental Conservation Service
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMR	Energy, Mines and Resources
FAO	Food and Agriculture Organization
FEARO	Federal Environmental Assessment Review Office
IEE	Initial Environmental Evaluation
IM	Initiating Minister
INAC	Indian and Northern Affairs Canada
IUCN	International Union for the Conservation of Nature and Natural Resources
MOE	Minister of the Environment
NCC	National Capital Commission
ND	National Defence
PCO	Privy Council Office
PFRA	Prairie Farm Rehabilitation Administration
PWC	Public Works Canada
TC	Transport Canada
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational Scientific and Cultural Organization
WHO	World Health Organization
WWF	World Wildlife Fund

ANNEX 5

1984 GUIDELINES ORDER

Registration
SOR/84-467 22 June, 1984

GOVERNMENT ORGANIZATION ACT, 1979

Environmental Assessment and Review Process Guidelines Order

P.C. 1984-2132 21 June, 1984

Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to subsection 6(2) of the Government Organization Act, 1979*, is pleased hereby to approve the annexed Guidelines respecting the implementation of the federal policy on environmental assessment and review, made by the Minister of the Environment on June 11, 1984.

GUIDELINES RESPECTING THE IMPLEMENTATION OF THE FEDERAL POLICY ON ENVIRONMENTAL ASSESSMENT AND REVIEW

Short Title

1. These Guidelines may be cited as the *Environmental Assessment and Review Process Guidelines Order*.

Interpretation

2. In these Guidelines,

"Environmental Impact Statement" means a documented assessment of the environmental consequences of any proposal expected to have significant environmental consequences that is prepared or procured by the proponent in accordance with guidelines established by a Panel; (*énoncé des incidences environnementales*)

"department" means, subject to sections 7 and 8,

(*a*) any department, board or agency of the Government of Canada, and

(*b*) any corporation listed in Schedule D to the *Financial Administration Act* and any regulatory body;

(*ministère*)

"initiating department" means any department that is, on behalf of the Government of Canada, the decision making authority for a proposal; (*ministère responsable*)

"Minister" means the Minister of the Environment; (*Ministre*)

"Office" means the Federal Environmental Assessment Review Office that is responsible directly to the Minister for the administration of the Process; (*Bureau*)

* S.C. 1978-79, c. 13, s. 14

Enregistrement
DORS/84-467 22 juin 1984

LOI DE 1979 SUR L'ORGANISATION DU GOUVERNEMENT

Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement

C.P 1984-2132 21 juin 1984

Sur avis conforme du ministre de l'Environnement et en vertu du paragraphe 6(2) de la Loi de 1979 sur l'organisation du gouvernement*, il plaît à Son Excellence le Gouverneur général en conseil d'approuver, conformément à l'annexe ci-après, le Décret sur les lignes directrices visant la mise en œuvre du processus fédéral d'évaluation et d'examen en matière d'environnement pris par le ministre de l'Environnement le 11 juin 1984.

DÉCRET SUR LES LIGNES DIRECTRICES VISANT LA MISE EN ŒUVRE DU PROCESSUS FÉDÉRAL D'ÉVALUATION ET D'EXAMEN EN MATIÈRE D'ENVIRONNEMENT

Titre abrégé

1. *Décret sur les lignes directrices visant le processus d'évaluation et d'examen en matière d'environnement.*

Définitions

2. Les définitions qui suivent s'appliquent aux présentes lignes directrices.

«Bureau» Le Bureau fédéral d'examen des évaluations environnementales chargé d'administrer le processus et relevant directement du Ministre. (*Office*)

«commission» Commission d'évaluation environnementale chargée, en vertu de l'article 21, de réaliser l'examen public d'une proposition. (*Panel*)

«énoncé des incidences environnementales» Évaluation détaillée des répercussions environnementales de toute proposition dont les effets prévus sur l'environnement sont importants, qui est effectuée ou fournie par le promoteur en conformité avec les directives établies par une commission. (*Environmental Impact Statement*)

«ministère» S'entend:

a) de tout ministère, commission ou organisme fédéraux, ou

b) dans les cas indiqués, l'une des corporations de la Couronne nommées à l'annexe D de la *Loi sur l'administration financière* ou tout organisme de réglementation.

(*department*)

* S.C. 1978-79, c. 13, art. 14

"Panel" means an Environmental Assessment Panel that conducts the public review of a proposal pursuant to section 21; (*commission*)

"Process" means the Environmental Assessment and Review Process administered by the Office; (*processus*)

"proponent" means the organization or the initiating department intending to undertake a proposal; (*promoteur*)

"proposal" includes any initiative, undertaking or activity for which the Government of Canada has a decision making responsibility. (*proposition*)

Scope

3. The Process shall be a self assessment process under which the initiating department shall, as early in the planning process as possible and before irrevocable decisions are taken, ensure that the environmental implications of all proposals for which it is the decision making authority are fully considered and where the implications are significant, refer the proposal to the Minister for public review by a Panel.

4. (1) An initiating department shall include in its consideration of a proposal pursuant to section 3

(*a*) the potential environmental effects of the proposal and the social effects directly related to those environmental effects, including any effects that are external to Canadian territory; and

(*b*) the concerns of the public regarding the proposal and its potential environmental effects.

(2) Subject to the approval of the Minister and the Minister of the initiating department, consideration of a proposal may include such matters as the general socio-economic effects of the proposal and the technology assessment of and need for the proposal.

5. (1) Where a proposal is subject to environmental regulation, independently of the Process, duplication in terms of public reviews is to be avoided.

(2) For the purpose of avoiding the duplication referred to in subsection (1), the initiating department shall use a public review under the Process as a planning tool at the earliest stages of development of the proposal rather than as a regulatory mechanism and make the results of the public review available for use in any regulatory deliberations respecting the proposal.

Application

6. These Guidelines shall apply to any proposal

(*a*) that is to be undertaken directly by an initiating department;

(*b*) that may have an environmental effect on an area of federal responsibility;

«ministère responsable» Ministère qui, au nom du gouvernement du Canada, exerce le pouvoir de décision à l'égard d'une proposition. (*initiating department*)

«Ministre» Le ministre de l'Environnement. (*Minister*)

«processus» Le processus d'évaluation et d'examen en matière d'environnement, administré par le Bureau. (*Process*)

«promoteur» L'organisme ou le ministère responsable qui se propose de réalise[illegible] une proposition. (*proponent*)

«proposition» S'entend en outre de toute entreprise ou activité à l'égard de laquelle le gouvernement du Canada participe à la prise de décisions. (*proposal*)

Portée

3. Le processus est une méthode d'auto-évaluation selon laquelle le ministère responsable examine, le plus tôt possible au cours de l'étape de planification et avant de prendre des décisions irrévocables, les répercussions environnementales de toutes les propositions à l'égard desquelles il exerce le pouvoir de décision.

4.(1) Lors de l'examen d'une proposition selon l'article 3, le ministère responsable étudie:

a) les effets possibles de la proposition sur l'environnement ainsi que les répercussions sociales directement liées à ces effets, tant à l'intérieur qu'à l'extérieur du territoire canadien; et

b) les préoccupations du public qui concernent la proposition et ses effets possibles sur l'environnement.

(2) Sous réserve de l'approbation du Ministre et du ministre chargé du ministère responsable, il doit être tenu compte lors de l'étude d'une proposition de questions telles que les effets socio-économiques de la proposition, l'évaluation de la technologie relative à la proposition et le caractère nécessaire de la proposition.

5.(1) Si, indépendamment du processus, le ministère responsable soumet une proposition à un règlement sur l'environnement, il doit veiller à ce que les examens publics ne fassent pas double emploi.

(2) Pour éviter la situation de double emploi visée au paragraphe (1), le ministère responsable doit se servir du processus d'examen public comme instrument de travail au cours des premières étapes du développement d'une proposition plutôt que comme mécanisme réglementaire, et rendre les résultats de l'examen public disponibles aux fins des délibérations de nature réglementaire portant sur la proposition.

Champ d'application

6. Les présentes lignes directrices s'appliquent aux propositions

a) devant être réalisées directement par un ministère responsable;

b) pouvant avoir des répercussions environnementales sur une question de compétence fédérale;

(*c*) for which the Government of Canada makes a financial commitment; or

(*d*) that is located on lands, including the offshore, that are administered by the Government of Canada.

7. Where the decision making authority for a proposal is a corporation listed in Schedule D to the *Financial Administration Act*, the Process shall apply to that proposal only if

(*a*) it is the corporate policy of that corporation to apply the Process; and

(*b*) the application of the Process to that proposal is within the legislative authority of that corporation.

8. Where a board or an agency of the Government of Canada or a regulatory body has a regulatory function in respect of a proposal, these Guidelines shall apply to that board, agency or body only if there is no legal impediment to or duplication resulting from the application of these Guidelines.

9. (1) Where, in respect of a proposal, there are two or more initiating departments, the initiating departments shall determine which of the responsibilities, duties and functions of an initiating department under these Guidelines shall apply to each of them.

(2) Where the initiating departments cannot under subsection (1) agree to a determination, the Office shall act as an arbitrator in the making of the determination.

INITIAL ASSESSMENT

Initiating Department

10.(1) Every initiating department shall ensure that each proposal for which it is the decision making authority shall be subject to an environmental screening or initial assessment to determine whether, and the extent to which, there may be any potentially adverse environmental effects from the proposal.

(2) Any decisions to be made as a result of the environmental screening or initial assessment referred to in subsection (1) shall be made by the initiating department and not delegated to any other body.

11. For the purposes of the environmental screening and initial assessment referred to in subsection 10(1), the initiating department shall develop, in cooperation with the Office,

(*a*) a list identifying the types of proposals that would not produce any adverse environmental effects and that would, as a result, be automatically excluded from the Process; and

(*b*) a list identifying the types of proposals that would produce significant adverse environmental effects and that would be automatically referred to the Minister for public review by a Panel.

12. Every initiating department shall screen or assess each proposal for which it is the decision making authority to determine if

(*a*) the proposal is of a type identified by the list described under paragraph 11(*a*), in which case the proposal may automatically proceed;

c) pour lesquelles le gouvernement du Canada s'engage financièrement; ou

d) devant être réalisées sur des terres administrées par le gouvernement du Canada, y compris la haute mer.

7. Lorsqu'une corporation nommée à l'annexe D de la *Loi sur l'administration financière* exerce le pouvoir de décision relativement à une proposition, le processus ne s'applique à la proposition que si la corporation:

a) a comme politique générale d'appliquer le processus; et

b) est habilitée à appliquer le processus à cette proposition.

8. Lorsqu'une commission ou un organisme fédéral ou un organisme de réglementation exerce un pouvoir de réglementation à l'égard d'une proposition, les présentes lignes directrices ne s'appliquent à la commission ou à l'organisme que si aucun obstacle juridique ne l'empêche ou s'il n'en découle pas de chevauchement des responsabilités.

9. (1) Lorsqu'il y a plus d'un ministère responsable à l'égard d'une proposition, ceux-ci décident entre eux de la répartition des fonctions et des responsabilités que les présentes lignes directrices attribuent à un ministère responsable.

(2) Lorsque les ministères responsables visés au paragraphe (1) ne peuvent en arriver à une décision unanime, le Bureau agit à titre d'arbitre dans la prise de la décision.

ÉVALUATION INITIALE

Le ministère responsable

10. (1) Le ministère responsable s'assure que chaque proposition à l'égard de laquelle il exerce le pouvoir de décision est soumise à un examen préalable ou à une évaluation initiale, afin de déterminer la nature et l'étendue des effets néfastes qu'elle peut avoir sur l'environnement.

(2) Les décisions qui font suite à l'examen préalable ou à l'évaluation initiale visés au paragraphe (1) sont prises par le ministère responsable et ne peuvent être déléguées à nul autre organisme.

11. Aux fins de l'examen préalable et de l'évaluation initiale visés au paragraphe 10(1), le ministère responsable dresse, en collaboration avec le Bureau, les listes suivantes:

a) une liste des divers types de propositions qui n'auraient aucun effet néfaste sur l'environnement et qui, par conséquent, seraient automatiquement exclus du processus; et

b) une liste des divers types de propositions qui auraient des effets néfastes importants sur l'environnement et qui seraient automatiquement soumises au Ministre pour qu'un examen public soit mené par une commission.

12. Le ministère responsable examine ou évalue chaque proposition à l'égard de laquelle il exerce le pouvoir de décision, afin de déterminer:

a) si la proposition est d'un type compris dans la liste visée à l'alinéa 11*a*), auquel cas elle est réalisée telle que prévue;

(*b*) the proposal is of a type identified by the list described under paragraph 11(*b*), in which case the proposal shall be referred to the Minister for public review by a Panel;

(*c*) the potentially adverse environmental effects that may be caused by the proposal are insignificant or mitigable with known technology, in which case the proposal may proceed or proceed with the mitigation, as the case may be;

(*d*) the potentially adverse environmental effects that may be caused by the proposal are unknown, in which case the proposal shall either require further study and subsequent rescreening or reassessment or be referred to the Minister for public review by a Panel;

(*e*) the potentially adverse environmental effects that may be caused by the proposal are significant, as determined in accordance with criteria developed by the Office in cooperation with the initiating department, in which case the proposal shall be referred to the Minister for public review by a Panel; or

(*f*) the potentially adverse environmental effects that may be caused by the proposal are unacceptable, in which case the proposal shall either be modified and subsequently rescreened or reassessed or be abandoned.

13. Notwithstanding the determination concerning a proposal made pursuant to section 12, if public concern about the proposal is such that a public review is desirable, the initiating department shall refer the proposal to the Minister for public review by a Panel.

14. Where, in any case, the initiating department determines that mitigation or compensation measures could prevent any of the potentially adverse environmental effects of a proposal from becoming significant, the initiating department shall ensure that such measures are implemented.

15. The initiating department shall ensure

(*a*) after a determination concerning a proposal has been made pursuant to section 12 or a referral concerning the proposal has been made pursuant to section 13, and

(*b*) before any mitigation or compensation measures are implemented pursuant to section 13,

that the public have access to the information on and the opportunity to respond to the proposal in accordance with the spirit and principles of the *Access to Information Act*.

16. The initiating department, in consultation with the Office, shall establish written procedures to be followed in order to make a determination under section 12 and shall provide the Office on a regular basis, with information, on its implementation of the Process with respect to the proposals for which it is the decision making authority.

17. The initiating department shall

(*a*) ensure that federal-provincial, territorial and international agreements reflect the principles of the Process with respect to proposals for which it is the decision making authority; and

b) la proposition est d'un type compris dans la liste visée à l'alinéa 11*b*), auquel cas elle est soumise au Ministre pour qu'un examen public soit mené par une commission;

c) si les effets néfastes que la proposition peut avoir sur l'environnement sont minimes ou peuvent être atténués par l'application de mesures techniques connues, auquel cas la proposition est réalisée telle que prévue ou à l'aide de ces mesures, selon le cas;

d) si les effets néfastes que la proposition peut avoir sur l'environnement sont inconnus, auquel cas la proposition est soumise à d'autres études suivies d'un autre examen ou évaluation initiale, ou est soumise au Ministre pour qu'un examen public soit mené par une commission;

e) si, selon les critères établis par le Bureau, de concert avec le ministère responsable, les effets néfastes que la proposition peut avoir sur l'environnement sont importants, auquel cas la proposition est soumise au Ministre pour qu'un examen public soit mené par une commission; ou

f) si les effets néfastes que la proposition peut avoir sur l'environnement sont inacceptables, auquel cas la proposition est soit annulée, soit modifiée et soumise à un nouvel examen ou évaluation initiale.

13. Nonobstant la détermination des effets d'une proposition, faite conformément à l'article 12, le ministère responsable soumet la proposition au Ministre en vue de la tenue d'un examen public par une commission, chaque fois que les préoccupations du public au sujet de la proposition rendent un tel examen souhaitable.

14. Le ministère responsable voit à la mise en application de mesures d'atténuation et d'indemnisation, s'il est d'avis que celles-ci peuvent empêcher que les effets néfastes d'une proposition sur l'environnement prennent de l'ampleur.

15. Le ministère responsable doit s'assurer

a) après qu'une détermination sur les effets d'une proposition a été faite conformément à l'article 12 ou après qu'une proposition a été soumise au Ministre conformément à l'article 13, et

b) avant la mise en application de mesures d'atténuation et d'indemnisation conformément à l'article 14,

que le public a accès à l'information concernant cette proposition conformément à la *Loi sur l'accès à l'information*.

16. Le ministère responsable, de concert avec le Bureau, établit par écrit les procédures à suivre pour la détermination des effets d'une proposition selon l'article 12 et fournit régulièrement au Bureau des renseignements concernant l'application du processus aux propositions à l'égard desquelles il exerce le pouvoir de décision.

17. Le ministère responsable:

a) s'assure que les ententes des services fédéraux avec les provinces, les territoires et d'autres pays sont en accord avec les principes du processus, en ce qui concerne les propositions à l'égard desquelles il exerce le pouvoir de décision; et

(*b*) include in its program forecasts and annual estimates of the resources necessary to carry out the Process with respect to proposals.

b) inscrit dans ses prévisions de programmes et ses budgets annuels les ressources nécessaires à l'application du processus à ces propositions.

Federal Environmental Assessment Review Office

18. It is the responsibility of the Office to

(*a*) provide initiating departments with procedural guidelines for the screening of proposals and to provide general assistance for the development and installation of implementation procedures;

(*b*) assist the initiating department in the provision of information on and the solicitation of public response to proposals early enough in the planning stage that irrevocable decisions will not be taken before public opinion is heard;

(*c*) publish in summary form the public information provided to the Office by an initiating department on proposals for which it is the decision making authority and for which a determination under section 12 has been made; and

(*d*) inform the Minister on a periodic basis, in a report to be made public, on the implementation of the Process by initiating departments.

Bureau fédéral d'examen des évaluations environnementales

18. Il incombe au Bureau

a) d'émettre à l'intention des ministères responsables, des lignes directrices pour l'évaluation initiale des propositions et pour aider ces ministères à instaurer des procédures d'application du processus;

b) d'aider les ministères responsables dans la prestation de renseignements et l'obtention de la réaction du public aux propositions, assez tôt au cours de l'étape de planification pour s'assurer que des décisions irrévocables ne sont pas prises avant que l'opinion du public soit entendue;

c) de publier, sous forme de résumé, l'information publique qui lui a été fournie par les ministères responsables au sujet des propositions à l'égard desquelles ces derniers exercent le pouvoir de décision et dont les effets sur l'environnement ont été déterminés conformément à l'article 12; et

d) d'informer le Ministre au moyen d'un rapport périodique à rendre public, au sujet de la mise en application du processus par les ministères responsables.

Other Departments

19. It is the role of every department that has specialist knowledge or responsibilities relevant to a proposal to

(*a*) provide to the initiating department any available data, information or advice that the initiating department may request concerning

(i) any regulatory requirements related to the project, and

(ii) the environmental effects and the directly related social impact of those effects; and

(*b*) as appropriate, advocate the protection of the interests for which it is responsible.

Autres ministères

19. Il incombe à tout ministère à vocation spécialisée ou ayant des responsabilités à une proposition donnée:

a) de fournir au ministère responsable, sur demande, des données, des renseignements ou des avis concernant:

(i) les exigences réglementaires afférentes à la proposition, et

(ii) les effets de la proposition sur l'environnement ainsi que les répercussions sociales qui y sont directement liées; et

b) au besoin, de proposer des mesures de protection pour les ressources renouvelables dont il a la responsabilité.

Public Review

20. Where a determination concerning a proposal is made pursuant to paragraph 12(*b*), (*d*) or (*e*) or section 13, the initiating department shall refer the proposal to the Minister for public review.

21. The public review of a proposal under section 20 shall be conducted by an Environmental Assessment Panel, the members of which shall be appointed by the Minister.

22. The members of a Panel shall

(*a*) be unbiased and free of any potential conflict of interest relative to the proposal under review;

(*b*) be free of any political influence; and

(*c*) have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the proposal under review.

Examens publics

20. Lorsque les effets d'une proposition ont été déterminés conformément aux alinéas 12*b*), *d*) ou *e*) ou à l'article 13, le ministère responsable soumet la proposition au Ministre pour examen public.

21. L'examen public visé à l'article 20 est réalisé par une commission d'évaluation environnementale dont les membres sont nommés par le Ministre.

22. Les membres d'une commission doivent:

a) faire preuve d'objectivité et ne pas être dans une situation où il y risque de conflit d'intérêts quant à la proposition à l'étude;

b) être à l'abri de l'ingérence politique; et

c) posséder des connaissances particulières et une expérience se rapportant aux effets prévus de la proposition sur les plans technique, environnemental et social.

23. (1) The Executive Chairman of the Office or his delegate shall be the Chairman of a Panel unless, in the opinion of the Minister, the circumstances of a particular review deem it inappropriate.

(2) The Executive Chairman of the Office shall appoint the Executive Secretary of the Panel.

24. The Office shall provide a Panel with

(*a*) any support staff that it may require; and

(*b*) any logistical and administrative services that it may require for its public review and for its public information program conducted pursuant to subsection 28(1).

25. (1) The public review of a proposal shall include

(*a*) an examination of the environmental effects of the proposal; and

(*b*) an examination of the directly related social impact of those effects.

(2) The examinations under paragraphs (1)(*a*) and (*b*) shall be conducted by the same Panel.

(3) Subject to the approval of the Minister and the Minister of the initiating department, the scope of the public review of a proposal may include such matters as the general socio-economic effects of the proposal and the technology assessment of and need for the proposal.

26. (1) The Minister, after consultation with the Minister responsible for the initiating department, shall issue the terms of reference outlining the scope of the public review to be undertaken by a Panel.

(2) The Office, in consultation with the initiating department, shall draft the terms of reference referred to in subsection (1).

(3) The terms of reference for a Panel shall be made available to the public.

27. (1) All hearings of a Panel shall be public hearings conducted in a non-judicial and informal but structured manner.

(2) A Panel shall establish, in accordance with procedural guidelines issued by the Office, its own detailed operating procedures.

(3) Witnesses before a Panel may be questioned but may not be sworn or subpeonaed.

(4) A Panel may question the relevancy and content of any information submitted to it.

28. (1) Every Panel shall conduct a public information program to advise the public of its review and to ensure that the public has access to all relevant information that any member of the public may request.

(2) The public information program referred to in subsection (1) shall be in addition to any other public information program that may be conducted by a department or a proponent that is specifically relevant to the activities of that department or proponent.

23. (1) Le président de chaque commission est le président exécutif du Bureau ou son délégué, à moins que le Ministre ne le juge pas indiqué en raison des circonstances d'un examen particulier.

(2) Le président exécutif du Bureau nomme le secrétaire exécutif de la commission.

24. Le Bureau fournit à la commission:

a) le personnel de soutien nécessaire; et

b) les services de soutien administratif et matériel dont elle a besoin pour mener son examen public et la campagne d'information visée au paragraphe 28(1).

25. (1) L'examen public d'une proposition comprend:

a) une étude des effets de la proposition sur l'environnement; et

b) une étude des répercussions sociales directement liées à ces effets.

(2) Les études visées aux alinéas (1)*a*) et *b*) sont menées par la même commission.

(3) Sous réserve de l'approbation du Ministre et du ministre chargé du ministère responsable, l'examen public d'une proposition peut porter sur des questions telles que les effets socio-économiques de la proposition, l'évaluation de la technologie et le caractère nécessaire de la proposition.

26. (1) Le Ministre, après consultation avec le ministre chargé du ministère responsable, établit le mandat de chaque commission en précisant la portée de l'examen public qu'elle effectuera.

(2) Le Bureau rédige le mandat visé au paragraphe (1) en consultation avec le ministère responsable.

(3) Le mandat de chaque commission est rendu public.

27. (1) Les audiences d'une commission sont des audiences publiques qui sont menées de manière informelle suivant des règles déterminées mais non judiciaires.

(2) Chaque commission établit une marche à suivre détaillée, conformément aux procédures générales établies par le Bureau.

(3) Les participants aux audiences publiques d'une commission peuvent être interrogés mais non assermentés ni assignés à comparaître.

(4) Une commission peut remettre en question la pertinence et le contenu des renseignements qui lui sont présentés.

28. (1) Chaque commission mène une campagne d'information pour tenir le public au courant de l'examen entrepris et s'assurer qu'il a accès à l'information pertinente qu'il peut demander.

(2) La campagne d'information visée au paragraphe (1) s'ajoute aux programmes d'information publique des ministères ou des promoteurs qui se rapportent directement à leurs activités.

29. (1) All information that is submitted to a Panel shall become public information.

(2) A Panel shall allow the public access to and sufficient time to examine and comment on the information submitted to it prior to a public hearing.

30. (1) Guidelines for the preparation of an Environmental Impact Statement may be issued by a Panel to the proponent in a public review.

(2) For the purpose of developing the guidelines referred to in subsection (1), a Panel may consult the public and any department.

31. (1) At the end of its review, a Panel shall

(*a*) prepare a report containing its conclusions and recommendations for decisions by the appropriate Ministers; and

(*b*) transmit the report referred to in paragraph (*a*) to the Minister and the Minister responsible for the initiating department.

(2) The Minister and the Minister responsible for the initiating department shall make the report available to the public.

32. Any of the requirements or procedures set out in sections 21 to 31 may be varied by the Office in the case of any federal-provincial review or any review that involves special circumstances.

Initiating Department

33. (1) It is the responsibility of the initiating department in a public review to

(*a*) ensure that the responsibilities of the proponent in the review are fulfilled;

(*b*) ensure that its senior officials and staff make presentations and respond to any questions for which it has responsibility;

(*c*) subject to subsection (2), decide, in cooperation with any other department, agency or board of the Government of Canada to whom the recommendations of a Panel are directed, the extent to which the recommendations should become a requirement of the Government of Canada prior to authorizing the commencement of a proposal;

(*d*) subject to subsection (2), ensure, in cooperation with other bodies concerned with the proposal, that any decisions made by the appropriate Ministers as a result of the conclusions and recommendations reached by a Panel from the public review of a proposal are incorporated into the design, construction and operation of that proposal and that suitable implementation, inspection and environmental monitoring programs are established; and

(*e*) subject to subsection (2), determine in what manner the decisions made under paragraph (*c*) and those referred to in paragraph (*d*) are to be made public.

29. (1) Tous les renseignements présentés à une commission sont rendus publics.

(2) La commission doit accorder au public suffisamment de temps pour lui permettre de prendre connaissance des renseignements qu'elle a reçus au sujet d'une poposition et de donner ses commentaires à ce propos.

30. (1) La commission établit à l'intention du promoteur des directives pour l'élaboration d'un énoncé des incidences environnementales.

(2) La commission peut consulter le public et les ministères pour l'élaboration des directives visées au paragraphe (1).

31. (1) Une fois l'examen terminé, la commission:

a) rédige un rapport contenant ses conclusions et les recommandations qu'elle adresse aux ministres responsables; et

b) fait parvenir le rapport visé à l'alinéa *a*) au Ministre et au ministre chargé du ministère responsable.

(2) Le Ministre et le ministre chargé du ministère responsable rendent public le rapport visé à l'alinéa (1)*a*).

32. Le Bureau peut modifier les exigences ou procédures énoncées aux articles 21 à 31, dans les cas d'examens conjoints fédéraux-provinciaux ou lorsque des circonstances spéciales l'exigent.

Le ministère responsable

33. (1) Lors d'un examen public, il incombe au ministère responsable:

a) de s'assurer que le promoteur s'acquitte de ses responsabilités;

b) de prendre les mesures nécessaires pour que ces hauts fonctionnaires et son personnel fassent des présentations et répondent aux questions sur les sujets relevant de sa compétence;

c) sous réserve du paragraphe (2), de décider, en collaboration avec d'autres ministères, commissions ou organismes fédéraux visés par les recommandations de la commission, de la mesure dans laquelle ces recommandations devraient devenir des exigences fédérales avant d'autoriser la mise en œuvre d'une proposition;

d) sous réserve du paragraphe (2), s'assurer, en collaboration avec d'autres organismes responsables, que les décisions prises par les ministres responsables à la lumière des conclusions et des recommandations qu'a formulées une commission à la suite de l'examen public d'une proposition, sont prises en considération dans la conception, la réalisation et l'exploitation de cette proposition et que des programmes appropriés de mise en œuvre, d'inspection et de surveillance environnementale sont établis; et

e) sous réserve du paragraphe (2), de déterminer de quelle façon seront rendues publiques les décisions prises en vertu de l'alinéa *c*) et celles visées à l'alinéa *d*).

(2) Where the initiating department has a regulatory function in respect of the proposal under review, the responsibilities set out in paragraphs (1)(*c*), (*d*) and (*e*) shall be amended to account for and not to interfere with the decision making responsibilities of that initiating department.

Proponent

34. It is the responsibility of the proponent in a public review to

(*a*) prepare, in accordance with any guidelines established by the Panel pursuant to subsection 30(1), the Environmental Impact Statement and supporting documents;

(*b*) submit to a Panel, in such languages as are determined appropriate by the Panel, sufficient copies of the Statement and documents referred to in paragraph (*a*) as are required for the purposes of the public review;

(*c*) implement a public information program to explain the proposal under review and its potential environmental effects;

(*d*) in the event that the Panel identifies deficiencies in the Statement referred to in paragraph (*a*), provide sufficient copies as are required for the purposes of the public review, such additional information as may be requested by the Panel;

(*e*) ensure that senior officals and expert staff are present at public hearings of the Panel and that they make the appropriate presentations and respond to any questions put to them; and

(*f*) ensure that appropriate post-assessment monitoring, surveillance and reporting, as required by the initiating department, are carried out.

The Federal Environment Assessment Review Office

35. It is the responsibility of the Office in a public review

(*a*) to draft for consideration by the Minister, in consultation with the initiating department, the terms of reference referred to in subsection 26(1);

(*b*) to identify persons as potential members of a Panel and to make contractual arrangements for their services;

(*c*) where appropriate, to negotiate provincial or territorial participation in a public review, federal participation in a provincial review, or any other participation in any other cooperative mechanisms; and

(*d*) provide written procedures, and any other advice and assistance on procedural and policy matters, to ensure that there is procedural and policy consistency between the various public reviews by Panels.

Other Departments

36. In a public review, it is the role of every department that has specialist knowledge or responsibilities relevant to a proposal to

(2) Lorsque le ministère responsable a un rôle de réglementation à l'égard de la proposition à l'étude, les responsabilités énoncées aux alinéas (1)*c*), *d*) et *e*) sont modifiées de façon à tenir compte des décisions de ce ministère et à ne pas y nuire.

Le promoteur

34. Lors d'un examen public, il incombe au promoteur:

a) d'élaborer l'énoncé des incidences environnementales et de présenter les documents à l'appui, conformément aux directives établies par la commission selon le paragraphe 30(1);

b) de présenter un nombre suffisant d'exemplaires de l'énoncé des incidences environnementales et des documents visés à l'alinéa *a*), pour l'examen public, dans les langues indiquées déterminées par la commission;

c) de mettre en œuvre un programme d'information publique visant à expliquer la proposition à l'étude et ses effets possibles sur l'environnement;

d) dans les cas où la commission décèle des lacunes dans l'énoncé des incidences environnementales visé à l'alinéa *a*), fournir un nombre suffisant d'exemplaires de l'information supplémentaire, pour l'examen public;

e) s'assurer que les hauts fonctionnaires et le personnel spécialisé assistent aux audiences publiques de la commission et qu'ils fassent les présentations appropriées et répondent aux questions qui leur sont posées; et

f) de veiller à ce qu'après l'évaluation, un contrôle et une surveillance indiqués soient assurés et que les rapports voulus soient présentés, comme que le demande le ministère responsable.

Le Bureau fédéral d'examen des évaluations environnementales

35. Lors d'un examen public, il incombe au Bureau:

a) de rédiger, en consultation avec le ministère responsable, le mandat visé au paragraphe 26(1) pour qu'il soit soumis au Ministre pour étude;

b) de trouver les membres éventuels d'une commission et de prendre des mesures contractuelles pour retenir leurs services;

c) au besoin, de négocier la participation provinciale ou territoriale à l'examen public, la participation fédérale à un examen provincial ou toute autre participation à des mécanismes coopératifs; et

d) de fournir un ensemble de procédures écrites ainsi que des conseils et de l'aide au sujet des questions de procédure et de politique, afin d'assurer l'uniformité sur le plan des procédures et de la politique entre les examens publics des diverses commissions.

Autres ministères

36. Lors d'un examen public, il incombe à tout ministère à vocation spécialisée ou ayant des responsabilités liées à une proposition donnée:

(*a*) provide to the Panel and any other participants in the public review any available data, information or advice that is requested from them;

(*b*) provide experts at public hearings of the Panel to make presentations or to respond to questions; and

(*c*) where appropriate, advocate the protection of the interests for which they have responsibility.

a) de fournir, sur demande, des données, des renseignements et des conseils aux membres de la commission et aux autres participants de l'examen public;

b) d'assurer la présence de spécialistes lors des audiences publiques de la commission afin que ceux-ci fassent des présentations ou répondent à des questions; et

c) d'encourager, au besoin, la protection des intérêts dont il est responsable.

EXPLANATORY NOTE

(This note is not part of the Regulation, but is intended only for information purposes.)

These Guidelines set out the requirements and procedures of the federal Environmental Assessment and Review Process and the responsibilities of the participants therein.

NOTE EXPLICATIVE

(La présente note ne fait pas partie du règlement et n'est publiée qu'à titre d'information)

Cette série de directives décrivent les exigences et les procédures du Processus fédéral d'évaluation et d'examen environnemental ainsi que les responsabilités de ceux qui y participent.

QUEEN'S PRINTER FOR CANADA, OTTAWA, 1984

IMPRIMEUR DE LA REINE POUR LE CANADA, OTTAWA, 1984

Errata:

Canada Gazette Part II, Vol. 118, No. 12, June 13, 1984

SOR/84-414

FISHERIES ACT

Quebec Fishery Regulations, amendment, p. 2511

In the table to section 18, sub-paragraph (1)(*a*)(ii)

delete: "April to March 31"

and *substitute* therefor: "April 1 to March 31"

Canada Gazette Part II, Vol. 118, No. 14, July 11, 1984

SOR/84-467

GOVERNMENT ORGANIZATION ACT, 1979

Environmental Assessment and Review Process Guidelines Order, p. 2794

In paragraph 15(*b*)

delete: "section 13"

and *substitute* therefor: "section 14"

ANNEX 6

LIST OF RECOMMENDATIONS

Authority:

1. It is recommended that specific environmental assessment legislation be developed at the federal level and that it include provisions for the establishment of regulations, audit procedures, the assessment of social impacts directly relevant to potential environmental effects, and authority for the Minister responsible for the reformed Process to trigger the Process on behalf of the environment when circumstances warrant.

Institutional Applicability:

2. It is recommended that the reformed Process apply to all departments, boards and agencies and all crown corporations and regulatory bodies without qualification, even if this means amendments to existing legislation.

Scope of Application:

3. It is recommended that self-assessment remain as the central core of any reformed Process.

4. It is recommended that regulations provide for an independent audit of the initial assessment stage by the Office responsible for the reformed Process.

5. It is recommended that a reformed Process should treat site-specific projects and other conceptual proposals separately.

6. It is recommended that detailed procedures for handling site-specific projects be outlined in regulations under the proposed new environmental assessment act.

7. It is recommended that:

   (a) provision be made in the Privy Council Office (PCO) for an assistant secretary to the Cabinet for environmental considerations (comparable to other assistant secretary positions);

   (b) provision be made to add as a standard requirement for all Cabinet submissions a section on "environmental considerations" including, when appropriate, more detailed information in an annex which would be intended for subsequent release as a public document;

(c) the assistant secretary for environmental considerations be assigned a key role in deciding whether a specific Cabinet submission should proceed directly to a Cabinet committee or to a new review mechanism as mentioned in (d);

(d) a new review mechanism be established (along the lines of the CCREM Task Force proposed 'Round Tables') with representation from the Government, national non-governmental organizations, labour, academic and business associations to consider those broad policy and management issues referred by the assistant secretary for environmental considerations; and

(e) the new review mechanism be empowered to refer the issue, or aspects thereof, for further study by a senior group or parliamentary committee, or, in certain circumstances, for panel review under the reformed Process.

Stages of Application:

8. It is recommended that the Office responsible for the administration of the Process be assigned the primary responsibility, in consultation with initiating departments, for the preparation of environmental screening criteria, exclusion lists, inclusion lists and initial assessment operating procedures.

9. It is recommended that the environmental screening criteria used for site-specific projects also be used as a basis for the preparation of the environmental considerations section of documents concerning the development of programs and policies.

10. It is recommended that a reformed Process provide for conflict resolution mechanisms as alternatives or precursors to a full-scale panel review in special situations, for example, where there are divergent views on a relatively few specific points. A particular mechanism e.g., environmental mediation, stakeholders' discussion groups, etc. should be selected by mutual agreement between the minister of the initiating department and the Minister of the Environment.

11. It is recommended that in any reformed Process greater emphasis be given to the post-implementation stage to ensure that there is an independent audit of the monitoring and follow-up program, and that the results are used to help improve the design and operation of future projects.

Public Involvement

12. It is recommended that in any reformed Process there be public consultation in the development of generic initial screening criteria which would then be used as a basis for the development of screening criteria and exclusion/inclusion lists suited to individual initiating department mandates.

13. It is recommended that, following the initial assessment, the information package made available for the public be based on the screening criteria and generally include a description of the proposal, its need and alternatives, and an account of the potential environmental consequences as described in the IEE. If the decision is to proceed without further review, the information should also contain a full description of any mitigating measures and proposed post-implementation follow-up. A specified time period should be allowed for response before any work on the proposal is undertaken.

14. It is recommended that the periodic (perhaps quarterly) initial assessment decision reports prepared by the Office be based on information provided by initiating departments, and include the above-mentioned information package as well as a summary of the public response to that information.

15. It is recommended that:

    (a) if twelve or more members of the public are sufficiently concerned that the potential environmental effects have not been adequately considered in the initial assessment decision, they may appeal (within a specified time from the public announcement of the decision to proceed-say 30 days) to the Minister of the Environment to have undertaken a more detailed examination of the proposal; and

    (b) if, after review, the Minister considers it appropriate, he be authorized to seek a court injunction to stop the proposal from proceeding further.

16. It is recommended that, for those policy and program proposals which are not referred by the new "review mechanism" for handling through the reformed Process, there be provision for public consultation either through some public forum process (e.g., parliamentary committee) or through the publication of a Cabinet document background paper outlining the relevant environmental considerations.

17. It is recommended that the report of conflict resolution deliberations be made public and, if the decision is to proceed, that the reports of any post-implementation follow-up and monitoring also be made public.

18. It is recommended that the principles used as a basis for selecting panel members in the current Process be retained in any reformed Process.

19. It is recommended that the terms of reference for each panel include specification of time periods for certain steps in the panel review, and that these be elaborated on by the panel in producing its own operating procedures, bearing in mind that not all aspects are within the control of the panel (for example, the time for the proponent to prepare the EIS).

20. It is recommended that panels have the right to seek amendments to their terms of reference if sufficient public concern is expressed during the public scoping sessions designed to identify the major concerns which need to be addressed in the guidelines for the environmental impact statement (EIS).

21. It is recommended that panel reports be made public within a predetermined time period (perhaps 30 days) following their preparation.

22. It is recommended that decisions flowing from the panel recommendations be made public as a "Record of Decision", along with the rationale for accepting or rejecting the recommendations in whole or in part.

23. It is recommended that the analysis of results from any post-implementation monitoring and follow-up program be made available to the public and be used for improvement in the general handling of future projects.

Decision Making

24. It is recommended that the Minister of the Environment be a standing member of the new review mechanism (for dealing with policies and programs).

25. It is recommended that, as one possible outcome of the audit of initial assessment decisions, the Minister of the Environment be empowered to override the decision of the minister of the initiating department if there is a need for further review.

26. It is recommended that:

(a) the Minister of the Environment share with the minister of the initiating department the responsibility for the selection of an alternative conflict resolution mechanism, if such is appropriate, and the decision(s) which may be required as a result of that mechanism; and

(b) in the event that the two ministers do not agree, the views of the Minister of the Environment should prevail.

27. It is recommended that:

(a) the Minister of the Environment share with the minister of the initiating department the responsibility for the decision(s) which will be required following receipt of panel recommendations; and

(b) in the event that the two ministers do not agree, the Minister of the Environment take the matter to Cabinet for resolution.

28. It is recommended that, regardless of any other regulatory requirements, site-specific projects be allowed to proceed only in accordance with the "Record of Decision" reached by the Minister of the Environment and the minister of the initiating department following receipt of the panel report.

29. It is recommended that, in the audit of the post-implementation monitoring and follow-up, the Minister of the Environment have the authority to require modification to operational procedures or implementation of corrective actions as needed to maintain environmental quality.

30. It is recommended that the Minister of the Environment have the authority to initiate an environmental assessment directly in certain circumstances involving federal responsibility, for example, in certain interjurisdictional matters, transboundary issues, and inter-basin water transfers.

(i) Confidentiality

31. It is recommended that the underlying concept that all information submitted to a panel should become public information remain essentially as it is.

32. It is recommended that provision be made for an independent arbiter to rule on the relative importance of the "public interest" and, in certain restricted circumstances, for a "closed door" session to be held to examine confidential information with only the conclusions concerning environmental significance being reported publicly.

(ii) Duplication

33. It is recommended that regulatory bodies such as the NEB take into account the "Record of Decision" flowing from the panel recommendations under the new environmental assessment legislation.

34. It is recommended that the Office responsible for the administration of a reformed Process negotiate agreements with other governments and bodies where duplication might occur, with a particular view of minimizing duplication by harmonizing practices or adopting the principle of "equivalency" where proposals involve overlapping mandates or jurisdictions.

(iii) Cumulative Effects

35. It is recommended that cumulative effects studies not be considered as an ongoing responsibility under a reformed Process.

36. It is recommended that time and spatial boundaries, within which cumulative effects should be considered, be clearly established in the terms of reference for a particular panel.

37. It is recommended that, in the absence of relevant cumulative effects information, a panel be authorized to commission a special study of pertinent cumulative effects, if such information is considered essential in its deliberations.

(iv) Regional/Area-wide Assessments

38. It is recommended that, along with efforts to harmonize EIA processes and to negotiate interjurisdictional environmental assessment agreements, the Government of Canada encourage collaborative regional planning and assessment studies to identify those ecological characteristics which are most susceptible to environmental disturbance, and those localities which are already environmentally stressed and the nature of those stresses.

(v) Application to Foreign Aid

39. It is recommended that, in the interest of global sustainable development, the Government of Canada continue to work in all possible international forums for the development and adoption of sound environmental assessment methodologies.

40. It is recommended that CIDA's bilateral aid policy be strengthened by including a requirement to release, for public review in Canada, information about the environmental assessment for each project prior to actual commitment of funds.

41. It is recommended that the above policy be widely publicized and that aid negotiations not even begin until the recipient country accepts this condition.

(vi) Formal/Informal Hearings

42. It is recommended that the proposed environmental assessment legislation make provision, under special circumstances, for the holding of formal hearings including the swearing of witnesses, cross-examination and the power of subpoena.

43. It is recommended that, under a reformed Process, the panel should decide, as appropriate, on the use of formal and/or informal hearings.

44. It is recommended that provision be made so that, if deemed necessary by the panel, the power of subpoena could be exercised regardless of the form of procedure selected for the panel review.

45. It is recommended that, regardless of the form of procedure selected, provision be made so that any person who indicates an interest in the proposal will be granted "standing" and will have an opportunity to be heard.

(vii) Reporting Relationships

46. It is recommended that the Office administering any reformed Process continue to report directly to the Minister of the Environment and through him to Parliament.

47. It is recommended that the Executive Chairman of the administering Office be an Order-in-Council appointment at the deputy minister level.

(viii) Intervenor Funding

48. It is recommended that intervenor funding be recognized as a legitimate and integral part of any reformed Process.

49. It is recommended that a policy framework and procedures designed specifically for intervenor funding in a reformed Process be developed.

50. It is recommended that the budget for the Office for the reformed Process include provision for limited funding for intervenors in particular circumstances, for example, costs involved in mediation, or initial costs pending allocation of funds from other sources.

51. It is recommended that the bulk of intervenor funding in relation to specific proposals come from initiating departments and proponents, and these funds should be available as soon as there is a clear indication that the proposal is to be referred for public review.

52. It is recommended that the administration of intervenor funds be handled by a small committee independent of the panel using published selection and accountability criteria.

ANNEX 7

SUMMARY DESCRIPTION OF THE REFORMED PROCESS

The examination of the Process by major characteristics and special issues was particularly useful in developing our recommendations. This form of presentation, however, does not make it easy for the reader to have a clear understanding of the actual sequence of steps that are involved in moving a proposal through the reformed Process from beginning to end. It is the purpose of this part of the report to do just that.

Because we have recommended that site-specific projects and conceptual proposals be handled somewhat differently, we will separate this summary into two parts. The steps for each part are shown in the flow diagram at the end of this Annex, and the text should be read in conjunction with reference to the diagram.

(a) Site-specific Projects

A site-specific project proposal is developed by an initiating department; the minister of that department (IM) is accountable. Under the self assessment concept, officers of the initiating department carry out the initial screening step using screening criteria (and exclusion/inclusion lists, if they exist) which have been developed jointly by the Office responsible for the Process and the initiating department. These screening criteria are based on generic screening criteria which were developed with public input through open consultations. The initial screening leads to one of four possible decisions by the initiating minister:

(i) the project may be abandoned or returned for revision;

(ii) the project may be allowed to proceed (with mitigation measures, if necessary) because:
- it is already on an exclusion list;
- it is considered that there are no significant adverse environmental effects; or
- any adverse effects that are known can be readily mitigated;

(iii) an initial environmental evaluation (IEE) is required because:
- there is insufficient information to be able to determine environmental effects; or
- there is insufficient information to be able to judge whether or not the adverse effects can be mitigated.

The preparation of an IEE involves more thorough examination of the project including wider consultation with experts (sometimes from other departments) but the effort will involve relatively modest resource commitments compared with the production of a full environmental impact statement (EIS).

(iv) the project may be referred to the Minister of the Environment for a full scale panel review because:
- it is already on an inclusion list;
- there are known significant adverse environmental effects associated with the project; or
- there is significant public concern about the project.

Periodically, the initiating department is required to produce a public information package which:

- provides basic information about those projects which have been allowed to proceed;
- lists those projects which are undergoing an IEE, and also identifies a contact person who can provide copies of the IEE or more information; and
- provides a brief description of projects which are being referred to the Minister of the Environment for panel review.

It is at this point that the Process would be terminated insofar as bilateral aid projects are concerned. Projects to be undertaken in Third World countries would not be subjected to full scale panel review in Canada but every effort would be made to ensure that they are environmentally sound.

Since a review of the IEE must also take into account any public concerns, the timing of its release must allow time for the public to respond before a decision is taken by the initiating minister who may make one of four decisions:

(i) the project may be abandoned or returned for revision;

(ii) the project may be referred to the Minister of the Environment for a full scale panel review;

(iii) the project may be allowed to proceed, with mitigation measures (if necessary) and monitoring; or

(iv) the project may be submitted to a new form of conflict resolution mechanism (when there is a divergence of views on relatively few points and this seems a more efficient way of reaching an agreement).

If the conflict resolution mechanism is selected, the initiating minister and the Minister of the Environment share the responsibility for selecting a particular mechanism and defining the terms of reference, including the establishment of a time period. The report from this conflict resolution activity is made public, and the initiating minister and the Minister of the Environment jointly decide whether or not to accept the conclusions. In the event that the two ministers do not agree, the views of the Minister of the Environment prevail. Any one of three decisions can be made:

(i) the project may be abandoned or returned for revision;

(ii) the project may be referred to the Minister of the Environment for a full scale panel review; or

(iii) the project may be allowed to proceed with mitigation measures (if necessary) and monitoring.

Up to this point in the Process there have been three routes which have led to the decision to allow the project to proceed (with mitigation measures, if necessary). In each case relevant information about the project will have been made available to the Office responsible for the reformed Process which, on behalf of the Minister of the Environment, will carry out an auditing function to evaluate the application of the Process. If circumstances warrant further review, the Minister of the Environment is advised and any one of three decisions can be made:

(i) the project may be abandoned or returned for revision;

(ii) the project may be referred for a full scale panel review; or

(iii) the project may be allowed to proceed as planned.

There is also an opportunity for the public to influence the decisions at this point in the Process. Information (in increasing detail) will have been made public about the projects which have been allowed to proceed following each of these three routes. If twelve or more members of the public are sufficiently concerned about the potential environmental effects, they may appeal to the Minister of the Environment to have a more thorough review made. If, after review, the Minister considers it appropriate, he is authorized to seek a court injunction to stop the project from proceeding further.

All projects that have been left in the Process at this time have been referred to the Minister of the Environment for a full scale panel review. The initiating minister and the Minister of the Environment jointly develop the terms of reference for the panel and the Minister of the Environment appoints the panel members. The panel agrees on its operating procedures and a provisional time table. The panel convenes public scoping sessions designed primarily to provide background information about the project, the type of hearings to be held, the terms of reference for

the panel, the procedures and time table, and to identify major issues and concerns which should be reflected in the environmental impact statement (EIS) guidelines.

If it appears that the terms of reference will not adequately address public concerns, the panel may seek approval of the initiating minister and the Minister of the Environment for appropriate amendments, but the minsters will have the final say.

The panel reviews available information about the project and the known public concerns, and decides whether the situation warrants formal or informal hearings, the normal procedure being informal hearings.

EIS guidelines are drafted following the scoping session and a limited period of time is allowed for public comment before they are finalized and given to the proponent. The proponent then prepares the EIS and submits it to the panel as a public document. This document is the centrepiece for the panel hearings (whether they be formal or informal) and will be extensively studied and reviewed by, or on behalf of the public, government agencies and panel commissioned experts. Panel hearings will be held and these may, in special circumstances, include arbitration or closed door sessions to consider confidential information, or application of the power of subpoena to obtain specific information. The panel then writes its report for the two ministers who must make the report public within a specified time period (perhaps 30 days). The initiating minister and the Minister of the Environment jointly decide on the extent to which the panel's recommendations will be accepted. If the ministers disagree, the Minister of the Environment will be responsible for taking the matter to Cabinet for a final decision. The proposal may also be taken to Cabinet if it is of such a nature that overall Government approval is required. The record of decision is then made public and this could involve a decision:

(i) that the project be abandoned or returned for revision;

(ii) that the project be allowed to proceed (with mitigating measures, if necessary) regardless of the panel's recommendations;

(iii) that the project be allowed to proceed according to panel recommendations; or

(iv) that the project be allowed to proceed with modified conditions compared with those contained in the panel recommendations.

If the decision is made to proceed, the proponent produces the final project design incorporating required environmental conditions. This project design is then submitted for approval, if required, to other regulatory bodies such as the National Energy Board.

Following consideration by all appropriate regulatory bodies, any further conditions are incorporated into the project design and the project is allowed to proceed through construction, operation and eventual decommissioning.

Part of the conditions imposed will have related to post-implementation follow-up and monitoring. In some circumstances provision may have been made for public representation on, or participation in, monitoring committees. The results of the post-implementation environmental monitoring and analysis are reported regularly and are subject to an audit by the Office responsible for the Process. If the audit shows a need, the Minister of the Environment would have the authority to require corrective action. In any event, the analysis of the post-implementation environmental monitoring will (with public input) contribute to improvements in the design, operation and assessment predictions for future projects.

(b) Policy and Program (conceptual) Proposals

Policy and program proposals are also developed by an initiating department. The minister of that department (IM) is accountable. Again, under the self assessment concept, officials of the initiating department apply either the generic screening criteria or, if they exist, the screening criteria developed specifically for that department. This screening step leads to one of two decisions by the initiating minister:

(i) the proposal may be abandoned or returned for revision; or

(ii) staff are authorized to undertake the preparation of a Cabinet submission including completion of an environmental considerations section and, if appropriate, a more detailed environmental analysis as an annex.

This submission is sent to the Privy Council Office (PCO) where it is reviewed by the appropriate assistant secretary and by the new assistant secretary for environmental considerations. The two assistant secretaries jointly decide how the submission should be handled. One of two decisions is possible:

(i) the submission may be referred directly to Cabinet committee (usually when there do not appear to be any potentially significant environmental implications); or

(ii) the submission may be referred to the proposed new review mechanism.

The new review mechanism's deliberations may include consultation with the initiating department but normally do not extend directly to public consultation. These deliberations lead to one of four decisions:

(i) that the proposal be abandoned or returned for revision;

(ii) that the proposal be referred for an EIA panel review under the reformed Process (this would likely be the route chosen for proposals originating from Environment Canada or proposals involving policies or programs in transportation or natural resource areas such as agriculture, forestry, fisheries, water, energy or land use);

(iii) that the proposal be referred for special study by a senior group or parliamentary committee (this would likely be the route chosen for proposals which are considered to have a potentially less direct but nevertheless measurable effect on the environment); or

(iv) that the proposal be referred directly to Cabinet committee (this would likely be the route chosen for proposals which even after this further review are judged not to have potentially significant environmental implications).

For those proposals referred for an EIA panel review, the procedure would be parallel with that proposed for site-specific projects referred for panel review up to and including publication of the record of decision following consideration by Cabinet, if necessary. Action beyond that point would normally be limited to site-specific projects.

For those proposals referred for special study by a senior group or parliamentary committee, the next step involves public consultation. This step may also involve the commissioning of special studies or investigations and the receipt of briefs and position papers. A report prepared by a parliamentary committee would go direct to Parliament. The report of a senior group would be referred to the proposed new mechanism, and would lead to one of two decisions:

(i) that the proposal be abandoned or returned for revision; or

(ii) that the proposal, along with recommendations be referred to Cabinet committee.

For those proposals referred to Cabinet committee, a review is carried out and recommendations forwarded to full Cabinet. Following consideration by Cabinet, one of two decisions emerges:

(i) the proposal may be abandoned or returned for revision; or

(ii) the proposal may be allowed to proceed (with conditions, if necessary).

Publication of the background paper describing the environmental assessment is announced at the same time as the decision to proceed.

PROPOSED REFORMED

POLICY AND PROGRAM PROPOSALS

Application of Screening Criteria IM

IM

Abandon or Revise

Preparation of Formal Document including Environmental Analysis IM

PCO

New Review Mechanism e.g. "Round Table"

New Mech.

Abandon or Revise

Referral for Special Study by Senior Group or Parl't Committee

Public Consultation

Report and Recommendations

New Mech.

Abandon or Revise

Referral for EIA Panel Review

Cabinet Committee

Cabinet

Cab.

Background Paper on EIA Made Public

Proceed, with Conditions and Monitoring (if necessary) IM

Abandon or Revise

Referral for EIA Panel Review

Terms of Reference for EIA Panel established IM MOE

EIA Panel Formed MOE

Public Scoping Sessions. Terms of Ref. EIS Guidelines

Panel

Formal or Informal Hearings

EIS Guidelines Published Panel

SITE-SPECIFIC PROJECT PROPOSALS

Public consultation on generic screening criteria

Specific screening criteria, lists & procedures developed by Office and initiating department.

Initial Screening IM

IM

Automatic Referral

Significant Public Concern

Significant Adverse Effects

Effects Unknown

Ability to Mitigate Unknown

Adverse Effects Mitigable

Insignificant Adverse Effects

Automatic Exclusion

Abandon or Revise

IEE IM

Public Information & Response

Cut-off point for bilateral aid projects

IM

Abandon or Revise

Proceed, with Mitigation (if necessary) and Monitoring IM

Audit, & Override (if necessary) MOE

MOE

Proceed as Planned IM

Refer for Further Review

Abandon or Revise

Proceed, with Mitigation (if necessary) and Monitoring IM

Audit, & Override (if necessary) MOE

MOE

Abandon or Revise

Refer for Further Review

Proceed as Planned IM

Refer for Further Review

Proceed, with Mitigation (if necessary) and Monitoring IM

Audit, & Override (if necessary) MOE

MOE

Abandon or Revise

Proceed as Planned IM

Conflict Resolution Mechanism IM MOE

Report Made Public

IM MOE

Abandon or Revise

Minister of Environment's view prevails if ministers disagree.

Refer for Further Review

Proceed, with Mitigation (if necessary) and Monitoring IM

Audit, & Override (if necessary) MOE

MOE

Abandon or Revise

Proceed as Planned IM

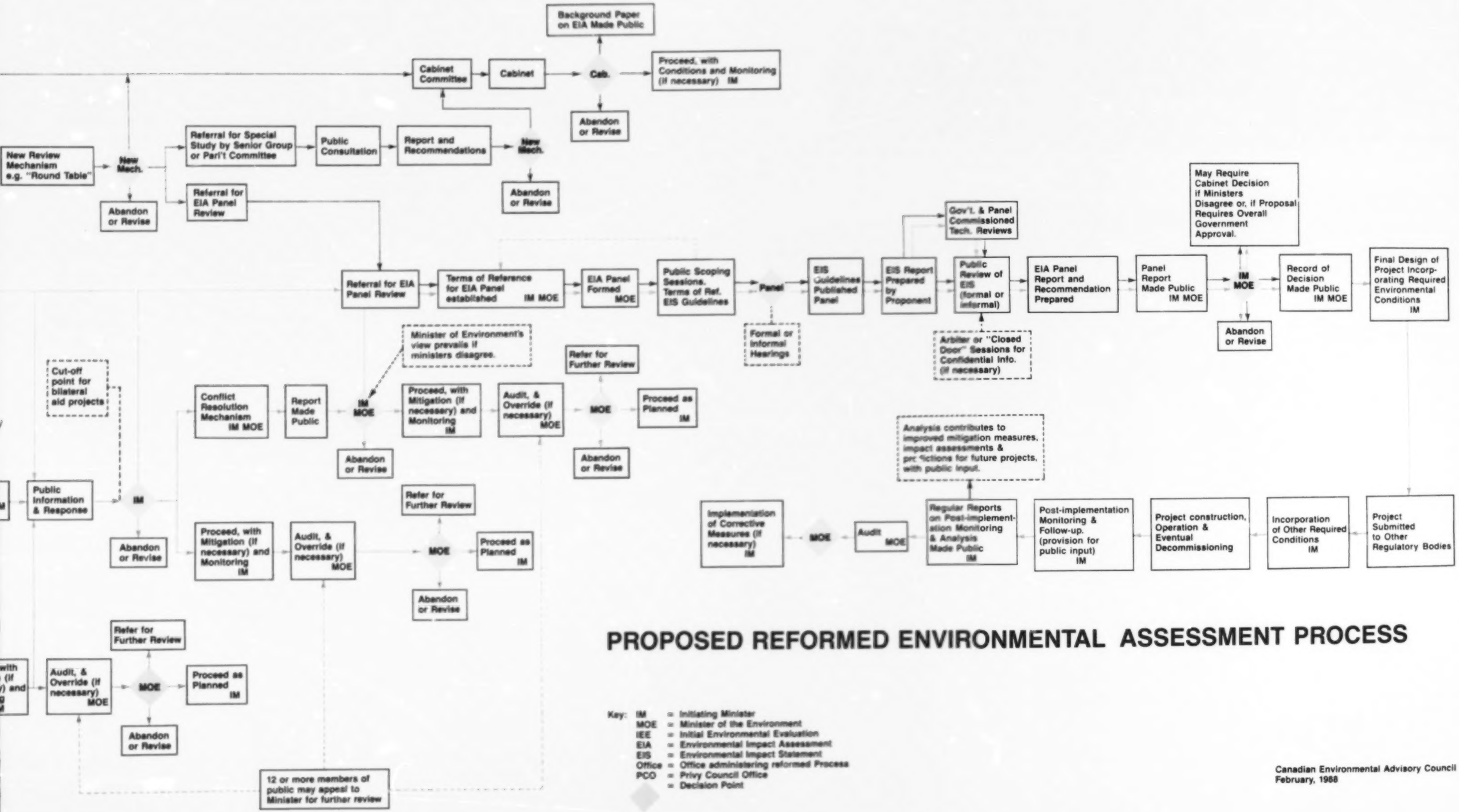
12 or more members of public may appeal to Minister for further review

Implementation of Corrective Measures (if necessary) IM

MOE

Audit

Key: IM = Initiating Minister
MOE = Minister of the Environment
IEE = Initial Environmental Evaluation
EIA = Environmental Impact Assessment
EIS = Environmental Impact Statement
Office = Office administering reformed Process
PCO = Privy Council Office
◇ = Decision Point


Background Paper on EIA Made Public
Cabinet Committee
Cabinet
Cab.
Proceed, with Conditions and Monitoring (if necessary) IM
Abandon or Revise
New Review Mechanism e.g. "Round Table"
New Mech.
Referral for Special Study by Senior Group or Parl't Committee
Public Consultation
Report and Recommendations
New Mech.
Abandon or Revise
Abandon or Revise
Referral for EIA Panel Review
Referral for EIA Panel Review
Terms of Reference for EIA Panel established IM MOE
EIA Panel Formed MOE
Public Scoping Sessions. Terms of Ref. EIS Guidelines
Panel
Formal or Informal Hearings
EIS Guidelines Published Panel
EIS Report Prepared by Proponent
Gov't. & Panel Commissioned Tech. Reviews
Public Review of EIS (formal or informal)
Arbiter or "Closed Door" Sessions for Confidential Info. (if necessary)
EIA Panel Report and Recommendation Prepared
Panel Report Made Public IM MOE
May Require Cabinet Decision if Ministers Disagree or, if Proposal Requires Overall Government Approval.
IM MOE
Abandon or Revise
Record of Decision Made Public IM MOE
Final Design of Project Incorporating Required Environmental Conditions IM
Minister of Environment's view prevails if ministers disagree.
Refer for Further Review
Cut-off point for bilateral aid projects
Conflict Resolution Mechanism IM MOE
Report Made Public
IM MOE
Proceed, with Mitigation (if necessary) and Monitoring IM
Audit, & Override (if necessary) MOE
MOE
Proceed as Planned IM
Abandon or Revise
Abandon or Revise
Public Information & Response
IM
Abandon or Revise
Proceed, with Mitigation (if necessary) and Monitoring IM
Audit, & Override (if necessary) MOE
MOE
Proceed as Planned IM
Refer for Further Review
Abandon or Revise
Refer for Further Review
Audit, & Override (if necessary) MOE
MOE
Proceed as Planned IM
Abandon or Revise
12 or more members of public may appeal to Minister for further review
Analysis contributes to improved mitigation measures, impact assessments & predictions for future projects, with public input.
Implementation of Corrective Measures (if necessary) IM
MOE
Audit MOE
Regular Reports on Post-implementation Monitoring & Analysis Made Public IM
Post-implementation Monitoring & Follow-up. (provision for public input) IM
Project construction, Operation & Eventual Decommissioning
Incorporation of Other Required Conditions IM
Project Submitted to Other Regulatory Bodies

PROPOSED REFORMED ENVIRONMENTAL ASSESSMENT PROCESS

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Canadian Environmental Advisory Council
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